

**PART VII. PENNSYLVANIA INFRASTRUCTURE  
INVESTMENT AUTHORITY**

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**CHAPTER 961. PENNSYLVANIA INFRASTRUCTURE INVESTMENT  
AUTHORITY GUIDELINES**

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**Authority**

The provisions of this Chapter 961 issued under section 6 of the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1—751.20), unless otherwise noted.

**Source**

The provisions of this Chapter 961 adopted July 22, 1988, effective July 23, 1988, 18 Pa.B. 3221, unless otherwise noted.

**Cross References**

This chapter cited in 25 Pa. Code § 103.5 (relating to preparation of project lists).

**§ 961.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1—751.20).

*Administrative staff*—Staff specifically assigned to administer the regular business of the Board.

*Authority*—The Pennsylvania Infrastructure Investment Authority.

*Board*—The Board of Directors of the Authority.

*Bonds*—Bonds, notes or other evidences of indebtedness issued by the Authority under the act.

*Eligible cost*—The cost of labor, materials, machinery and equipment, lands, property, rights and easements, plans and specifications, surveys or estimates of costs and revenues, prefeasibility studies, engineering and legal services and other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

*Governmental unit*—An agency of the Commonwealth or a county, municipality or school district, or an agency, instrumentality, authority or corporation thereof, or a public body having local or regional jurisdiction or power.

*Industrial wastewater project*—The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a facility or system for the collection, treatment or disposal of industrial wastewater resulting from manufacturing or industry or from another establishment.

*Project*—The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a facility or system, whether publicly or privately owned, for the collection, treatment or disposal of wastewater, including industrial waste, or for the supply, treatment, storage or distribution of drinking water.

*Sewerage project*—The eligible cost associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a sewerage facility or sewerage system for the collection, treatment or disposal of municipal or domestic wastewater.

*Wastewater project*—An industrial wastewater project or a sewerage project.

*Water Facilities Loan Board*—The Board established under 32 Pa.C.S. § 7504 (relating to Water Facilities Loan Board).

*Water project*—The eligible cost associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a facility or system whether publicly or privately owned for the supply, treatment, storage or distribution of drinking water.

*Water system*—A system which provides water to the public for human consumption which has at least 15 service connections used by year-round residents or regularly serves at least 25 of the same persons over 6 months per year. The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system. The term includes collection or pretreatment storage facilities not under that control which are used in connection with the system.

### **§ 961.2. Applicant eligibility.**

(a) An owner or operator of a facility or system for the collection, treatment or disposal of wastewater, including industrial waste, or for the supply, treatment, storage or distribution of drinking water is an eligible project sponsor and may

apply for financial assistance. The owner or operator may be either a public or private entity, including a person, corporation, partnership, association, municipal authority or governmental unit.

(b) If the applicant is a lessee or operator, the applicant shall apply jointly with the facility or system owner for financial assistance.

**§ 961.3. Financial assistance criteria.**

(a) The Board will consider the following criteria when considering applications for financial consideration:

(1) Whether the project will improve the health, safety, welfare or economic well being of the people of this Commonwealth.

(2) Whether the proposed project will lead to an effective or complete solution to the problems experienced with the water supply or sewage treatment system to be aided, including compliance with State and Federal laws, regulations or standards.

(3) The cost-effectiveness of the proposed project in comparison with other alternatives, including other institutional, financial and physical alternatives.

(4) The consistency of the proposed project with other State and regional resource management and economic development plans. These plans may include, but are not limited to, the State Water Plan, the municipal sewerage plan for the area served adopted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and the State's Economic Development Strategy.

(5) Whether the applicant has demonstrated its ability to operate and maintain the project in a proper manner.

(6) Whether the project encourages consolidation of water or sewer systems where the consolidation would enable the customers of the systems to be more effectively and efficiently served.

(7) The availability of other sources of funds at reasonable rates to finance all or a portion of the project and the need for authority assistance to finance the project or to attract the other sources of funding. The Board may require the applicant to participate in financing a project when it determines that the applicant has the financial capability to do so and that the participation is desirable.

(8) No project will be considered for financial assistance which will have a detrimental impact on this Commonwealth's air, land or water, or on the natural scenic, historic or aesthetic values of the environment unless the environmental harm can be satisfactorily mitigated.

(b) The Board may approve the request for financial assistance for projects which address emergency public health and safety needs or economic development opportunities.

**§ 961.4. Application procedure.**

(a) An application shall be made on forms approved by the Board and be addressed to the Authority.

(b) The Department of Environmental Resources and the Department of Commerce will provide the administrative staff of the Board with a written evaluation of each application.

(c) The fundamental objectives that will guide project selection are improvements to public health, public safety and the environment. Performance on other criteria will also influence project evaluations and selection. The following are the general criteria that will be used in evaluating projects, and specific examples of performance in each of these criteria.

**§ 961.5. Wastewater project evaluation criteria.**

(a) *Public health and safety.*

(1) Direct human impact due to onlot malfunctions or inadequately treated sewage.

(2) Severity of individual or public water supply contamination.

(3) Degree of impact on public bathing areas.

(4) Severity of safety hazards from deteriorated facilities.

(b) *Environmental impact.*

(1) Damage to fish and aquatic life.

(2) Loss of boating and recreation opportunity.

(3) Impact on industrial water supply uses.

(4) Impact on crop irrigation.

(5) Degradation of streams used for stock watering.

(6) Reduction in pollution as called for in the Chesapeake Bay Agreements.

(c) *Economic development.*

(1) Development activity and job creation/retention resulting directly or indirectly from the project.

(2) Opportunity to use other State programs, such as the Business Infrastructure Development, Site Development and Community Facilities programs, to fund the project.

(3) Degree of local distress in the county where the project is located.

(d) *Compliance.*

(1) Enforcement status of project.

(2) Existence of overload conditions.

(e) *Adequacy, efficiency and social impact.*

(1) Extent that regionalization or consolidation of facilities will be accomplished.

(2) Population directly affected.

(3) Median household income in comparison to Statewide median.

**§ 961.6. Water project evaluation criteria.**(a) *Public health.*

(1) Elimination of an ongoing public health hazard. *Example:* Correcting VOC or Giardia contamination.

(2) Elimination of a periodic or potential health hazard. *Example:* Correcting malfunctioning disinfection system.

(3) Preventive maintenance—related to health hazards. *Example:* Covering of finished water reservoir.

(b) *Public safety.*

(1) Elimination of an ongoing hazard. *Example:* Elimination of methane gas contamination—explosion potential.

(2) Elimination of a periodic or potential safety hazard. *Example:* Providing sufficient water for fire fighting when current supply is inadequate.

(3) Preventive maintenance—related to safety hazards. *Example:* Installation of fire hydrants where none exist.

(c) *Economic development.*

(1) Development activity and job creation/retention resulting directly or indirectly from the project.

(2) Opportunity to use other State programs, such as the Business Infrastructure Development, Site Development and Community Facilities programs, to fund the project.

(3) Degree of local distress in the county where the project is located.

(d) *Compliance.* Improvement in water system compliance. *Example:* Installing filtration plant to treat for Giardia contamination.

(e) *Environmental and social impact.*

(1) Beneficial environmental and social impacts. *Example:* Construction of a new public water system to replace onlot water supplies.

(2) Beneficial environmental impact only. *Example:* Installation of new sludge handling facilities at a filtration plant.

(3) Beneficial social impact only. *Example:* A project that improves public health or public safety.

(f) *Adequacy and efficiency.* Increase in availability of water, consolidation of systems, water conservation or improvement in aesthetic water quality.

*Examples:* Installation of treatment for iron removal; replacement of leaking water lines; installation of water meters.

**§ 961.7. Eligible costs.**

(a) In addition to the costs enumerated in the act, eligible project costs considered by the Board may include, but not be limited to, the following:

(1) Project design and engineering, including the development of prefeasibility, feasibility and planning studies, plans, specifications, cost estimates, surveys and project inspection and management.

- (2) Financial condition and audit reports required for financial assistance application.
  - (3) Administrative costs, including financial reporting costs, generated by the project and specifically included in the financial assistance agreement.
  - (4) Acquisition of property rights and equipment that are preliminary to or a necessary part of the project. Acquisition of property rights may include the costs associated with the acquisition, including taxes, fees, surveys, title insurance and relocation fees specifically included in the financial assistance agreement.
  - (5) Legal service fees generated by the project.
  - (6) Permit fees.
  - (7) Insurance or bonds associated with the construction of the project.
  - (8) Security bonds, necessary reserves and costs of establishing and securing total financing arrangements for the project.
  - (9) Interest during construction or financing of the project and allowance for funds used during construction.
  - (10) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.
  - (11) Other costs determined by the Board to be necessary or incidental to the project.
- (b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in other projects.

**§ 961.8. Ineligible costs.**

- (a) *Sewerage*. The following activities conducted in conjunction with sewerage project development and construction are not eligible for financial assistance:
- (1) Cost of acquisition or construction of house laterals and interior plumbing.
  - (2) Projects that have not secured planning and permit approvals under Chapters 71, 91 and 92 (relating to administration of sewage facilities program; general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance).
  - (3) Costs associated with the purchase of land that is not a component in the physical, biological or chemical treatment process.
  - (4) Legal or professional fees associated with litigation of a Commonwealth enforcement action.
  - (5) Costs associated with replanning or redesign subsequent to loan approval except where unforeseen site conditions discovered during construction requires replanning or redesign.
  - (6) Costs associated with the development of an approvable Official Sewage Plan under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

(7) Costs associated with refinancing projects, as specified in section 10(m) of the act (35 P. S. § 751.10(m)).

(b) *Industrial wastewater.* The following activities conducted in conjunction with industrial wastewater project development and construction are not eligible for financial assistance:

(1) Cost of acquisition or construction of interior plumbing.

(2) Projects which have not secured planning and permit approvals under Chapters 91 and 92.

(3) Costs associated with the purchase of land that is not a component in the physical, biological or chemical treatment process.

(4) Legal or professional fees associated with litigation of a Commonwealth enforcement action.

(5) Costs associated with replanning or redesign subsequent to financial assistance approval except if unforeseen site conditions discovered during construction requires replanning or redesign.

(6) Costs associated with the extraction for profit of minerals or other resources from wastewater or sludges.

(7) Costs associated with refinancing projects, as specified in section 10(m) of the act.

(c) *Water systems.* The following activities conducted in conjunction with water project development and construction are not eligible for financial assistance.

(1) Projects or those portions of projects not related to a water system.

(2) The cost of acquisition or construction of interior plumbing and fixtures.

(3) Legal or professional fees associated with litigation of a Commonwealth enforcement action.

(4) Projects for water systems which are not in compliance with requirements established under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), unless the purpose of the project is to bring the water system into compliance.

(5) Costs associated with refinancing projects, as specified in section 10(m) of the act.

### § 961.9. Grants.

(a) Grants will be considered only when the Board determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will not be able to proceed with the project without a grant. If the Board determines that a grant is appropriate, the Board will attempt to mix the grant funds with loan funds, if financially possible.

(b) In determining whether a grant should be offered, and, if so, what proportion of the financial assistance offered should constitute a grant and what portion should constitute a loan, the Board will consider the ultimate effect that financ-

ing a project's costs will have on the rates that customers will have to pay. A rate increase will be compared with local incomes and ability to pay in assessing the need for a grant. In doing this assessment, the Board may consider factors including, but not limited to, the following:

- (1) The median household income of the system's service area.
  - (2) Existing and projected user fees.
  - (3) The financial condition of the applicant, including revenues, expenses, debt structure, equity position, available collateral and financial condition of an owner or parent organization.
  - (4) The social, economic and financial condition of the community served, including population change, percentage of senior citizens and percentage of low and moderate income persons.
  - (5) The inability of the applicant to secure grant funding from other sources.
- (c) The Board may limit individual grant awards to whatever amount it deems desirable.
- (d) Grants will be made subject to the terms and conditions that the Board establishes.

#### § 961.10. Loans.

- (a) The term of loans shall normally be 20 years from the day the loan agreements are executed. The Board may specify different terms in cases that it deems necessary or desirable to do so.
- (b) The borrower shall pay interest at the determined rate on funds disbursed during construction. Upon completion of the project and its acceptance by the Board, or upon 3 years from the date the loan agreements are executed, whichever comes first, payments of principal and interest shall become due and payable upon an amortization schedule to be established by the Board. The Board may defer the initiation of the repayment of principal up to 5 years from the date the loan agreements are executed. The borrower may begin principal and interest payments sooner than required in this subsection if it so chooses.
- (c) The minimum rate of interest to be paid on a loan shall be 1%. The maximum rate of interest may not exceed the following:
- (1) For projects in counties where the unemployment rate exceeds the Statewide unemployment rate by 40% or more, 1% for the first 5 years and 25% of the bond interest rate for the remainder of the loan.
  - (2) For projects in counties where the unemployment rate exceeds the Statewide unemployment rate, but exceeds it by less than 40%, 30% of the bond interest rate for the first 5 years and 60% of the bond interest rate for the remainder of the loan.
  - (3) For other projects, 60% of the bond interest rate for the first 5 years and 75% of the bond interest rate for the remainder of the loan.

(4) For projects located within municipalities for which unemployment rates exist that would qualify the project for lower interest rates than if the relevant county unemployment rates were used, the unemployment rate of that municipality may be used in determining the interest rate on the loan.

(d) For purposes of this subsection, the phrase “unemployment rate of the county” means the average unemployment rate for the county in the most recent calendar year for which data have been finalized. For the projects which serve multiple counties, the highest unemployment rate of the counties involved shall be used. The unemployment data utilized shall be data reported by the Department of Labor and Industry. For purposes of this subsection, the phrase “bond interest rate” is the rate of interest paid by the Commonwealth immediately preceding the date of the loan for the general obligation bonds used to finance the loan.

(e) In establishing the interest rate of a loan, the Board will consider the ultimate effect that the financing of a project’s costs will have on the rates customers will have to pay. A rate increase will be compared with local incomes and ability to pay in determining a loan’s interest rate. In the process of setting an interest rate, the Board may consider factors including, but not limited to:

- (1) The current market interest rate.
- (2) The financial, social and economic condition of the area served by the project including, but not limited to, the unemployment rate in the project county as it compares to the Statewide average unemployment rate.
- (3) The financial condition of the applicant.
- (4) The median household income in the system’s service area.
- (5) Historical, existing and projected user fees.
- (6) The financial condition of the Authority and the necessity to maintain the Authority’s funds in a financially sound manner.

(f) Loans shall be made subject to the terms and conditions that the Board establishes.

#### **§ 961.11. Funding limitations.**

In no case may total assistance to a single project total more than \$11 million or \$20 million if a project serves more than one municipality, except that the Board by an affirmative vote of at least nine members may authorize loans in excess of \$20 million to comprehensive projects providing or proposing consolidated services to a region encompassing all or parts of four or more municipalities.

#### **§ 961.12. Project implementation and reporting.**

For each project approved by the Board, the administrative staff will develop financial assistance documents which will, among other things, define the terms and conditions under which the financial assistance is offered, the project man-

agement plans, project cost breakdown, project scope, reporting requirements and other legal documents as determined to be necessary by the Authority.

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