



Ohio Revised Code

Section 6109.22 Rules for administrative assessment and collection of monetary penalties.

Effective: September 9, 2016

Legislation: House Bill 512 - 131st General Assembly

(A) There is hereby created the drinking water assistance fund to provide financial and technical assistance for the purposes of protecting public health and achieving and maintaining compliance with the Safe Drinking Water Act and this chapter. In addition to the accounts created under divisions (G) and (H) of this section, the drinking water assistance fund may include any other accounts established by the director of environmental protection. The fund shall be administered by the director consistent with the Safe Drinking Water Act, this section, and rules adopted under division (M) of this section.

(B) The drinking water assistance fund shall consist of the moneys credited to it from all capitalization grants received under the Safe Drinking Water Act except for moneys reserved by the governor pursuant to Title III, section 302 of that act, all moneys credited to the fund from nonfederal sources, including, without limitation, the proceeds of state bonds or notes issued for the benefit of the fund, all payments of principal and interest on loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date that a capitalization grant payment made under the authority of the Safe Drinking Water Act is credited to the fund, required matching moneys shall be credited to the fund. Any moneys transferred to or reserved from the drinking water assistance fund pursuant to Title III, section 302 of the Safe Drinking Water Act shall be accounted for separately.

(C) In a manner consistent with the Safe Drinking Water Act and the applicable drinking water assistance management plan prepared in accordance with this section, the director may reserve and award for assistance moneys allotted to the state under section 1452 of the Safe Drinking Water Act, provided that the director makes a determination that the use of the moneys will accomplish the state's objectives and the objectives established for capitalization grants under the Safe Drinking Water Act. The director may use a portion of the reserved moneys to enter into contracts with qualified organizations, including private nonprofit organizations, to provide statewide on-site technical assistance to small public water systems.



(D) Subject to the terms of the agreements provided for in division (E) of this section, moneys in the drinking water assistance fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section 6121.11 of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section 6121.12 of the Revised Code. Moneys in the drinking water assistance fund shall be separate and apart from and not a part of the state treasury or of the other funds of the authority. No withdrawals or disbursements shall be made from the drinking water assistance fund without the written authorization of the director.

(E) The director shall adopt written criteria to ensure that fiscal controls are established for prudent administration of the drinking water assistance fund. For that purpose, the director and the authority shall enter into any necessary and appropriate agreements under which the authority may perform or provide any of the following:

- (1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;
- (2) Administration of loan accounts;
- (3) Maintenance, management, and investment of moneys in the fund.

Any agreement entered into under division (E) of this section shall provide for the payment of reasonable fees to the authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payment of any of the fees to the authority may be made from the drinking water assistance administrative account established under division (G) of this section.

(F) The authority may make moneys available to the director for the purpose of providing matching moneys required to be credited to the drinking water assistance fund under division (B) of this section, subject to any terms that the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to provide those matching moneys.



The director and the authority may enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the drinking water assistance fund, including, without limitation, the raising of matching moneys required to be credited to the fund in accordance with division (B) of this section. The agreements may authorize the pledge of moneys accruing to the fund from payments of principal or interest or both on loans made from the fund to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the drinking water assistance fund. The agreements may contain any terms that the director and the authority consider reasonable and proper for the payment and security of the bondholders or noteholders.

(G) There is hereby established within the drinking water assistance fund the drinking water assistance administrative account. No state matching moneys deposited into the fund under this section shall be used for the purpose of paying for or defraying the costs of administering this section. The director may establish and collect fees from applicants for assistance provided under this section. The total fees charged to an applicant under this division for assistance under this section shall not exceed the following:

(1) For the environmental protection agency, one per cent of the principal amount of the assistance awarded to the applicant;

(2) For the authority, thirty-five one-hundredths of one per cent of the principal amount of the assistance awarded to the applicant.

All moneys from the fees shall be credited to the drinking water assistance administrative account in the fund. The moneys shall be used solely to defray the costs of administering this section.

(H) There is hereby established within the drinking water assistance fund the water supply revolving loan account. The director may provide financial assistance from the water supply revolving loan account for improvements to community water systems and to nonprofit noncommunity public water systems.

(I) All moneys from the fund credited to the water supply revolving loan account, all interest earned on moneys credited to the account, and all payments of principal and interest on loans made from the account shall be dedicated in perpetuity and used and reused solely for the following purposes,



except as otherwise provided in this section:

- (1) To make loans to community water systems and nonprofit noncommunity public water systems, subject to all of the following conditions:
 - (a) The loans are made at or below market rates of interest, including, without limitation, interest-free loans;
 - (b) Each recipient of a loan shall establish a dedicated source of security or revenue for repayment of the loan;
 - (c) Periodic payments of principal and interest shall be required on the dates and in the amounts approved by the director;
 - (d) All payments of principal and interest on the loans shall be credited to the water supply revolving loan account.
- (2) To purchase or refinance at or below market rates interest debt obligations incurred after July 1, 1993, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state. If any debt obligations are purchased or refinanced under division (I)(2) of this section to provide financial assistance for any of the purposes allowed under division (I) of this section, the repayment period may extend up to forty-five years. However, the repayment period shall not exceed the expected useful life of any facilities that are financed by the obligations.
- (3) To guarantee or purchase insurance for debt obligations when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest paid on those obligations;
- (4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes are or will be deposited into the account;
- (5) To provide subsidies in addition to any other financial assistance afforded disadvantaged



communities under this section;

(6) To earn interest on moneys credited to the account;

(7) To provide any other assistance authorized by the Safe Drinking Water Act or any other federal law related to the use of federal funds administered under the Safe Drinking Water Act.

(J) The director may provide financial assistance from the water supply revolving loan account after determining all of the following:

(1) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its public water system and the proposed improvements to it;

(2) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance;

(3) The public water system of which the project for which assistance is proposed is a part is economically and nonmonetarily cost-effective, based on an evaluation of feasible alternatives that meet the drinking water treatment needs of the planning area in which the proposed project is located;

(4) Based on a comprehensive environmental review approved by the director, there are no significant adverse environmental effects resulting from all necessary improvements to the public water system of which the project proposed for assistance is a part;

(5) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the Safe Drinking Water Act;

(6) The application meets the requirements of this section and rules adopted under division (M) of this section and is consistent with section 1452 of the Safe Drinking Water Act and regulations adopted under it;



(7) If the applicant for assistance is a water district formed under Chapter 6119. of the Revised Code that operates a public water system and that water district seeks to extend the distribution facilities, increase the number of service connections to its system, or provide for any other expansion of its system, the water district has consulted with the board of county commissioners from each county in which is located the proposed extension of distribution facilities, increase in the number of service connections, or other expansion of the public water system;

(8) The application meets any other requirements that the director considers necessary or appropriate to protect public health and the environment and to ensure the financial integrity of the water supply revolving loan account.

Upon approval by the director of an application for financial assistance, the Ohio water development authority shall disburse the appropriate financial assistance from the water supply revolving loan account. If the proposed financial assistance is a loan, and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the authority, the director shall submit the application for the loan to the authority for review and approval with respect to any matters pertaining to security for and the marketability of authority bonds. Review and approval by the authority shall be required prior to the making of such a loan.

(K) In accordance with rules adopted under division (M) of this section, the director periodically shall prepare a drinking water assistance management plan establishing the short-term and long-term goals for the assistance provided under this section, the allocation of available resources for the purposes of this section, the environmental, financial, and administrative terms, conditions, and criteria for the award of financial and technical assistance under this section, and the intended uses of capitalization grants and available moneys from the drinking water assistance fund. Criteria for awarding financial or technical assistance under this section shall not favor or disfavor any otherwise qualified nonprofit noncommunity public water system because it is owned by, operated by, or services a religious organization or a facility used for religious purposes. Prior to its adoption, the director shall make the drinking water assistance management plan available for public review and comment at a minimum of two public meetings and shall take adequate steps to ensure that reasonable public notice of each public meeting is given at least thirty days prior to the meeting.



The plan shall include, without limitation, a system that prioritizes projects funded by the water supply revolving loan account based on the relative risk to human health being addressed, their necessity for ensuring compliance with requirements of the Safe Drinking Water Act, and their affordability to the applicants, as determined by the director. Financial assistance for projects from the water supply revolving loan account shall be limited to projects that are included in that prioritization and shall be awarded based upon their priority position and the applicants' readiness to proceed with their proposed activities as determined by the director. The drinking water assistance management plan shall include terms, conditions, amounts of moneys, and qualifying criteria, in addition to any other criteria established under this section, governing the financial assistance to be awarded to applicants from the water supply revolving loan account. The director shall determine the most effective use of the moneys in that account to achieve the state's drinking water assistance goals and objectives.

(L) The director, consistent with this section and applicable rules adopted under division (M) of this section, may enter into an agreement with an applicant for assistance from the drinking water assistance fund. Based on the director's review and approval of the project plans submitted under section 6109.07 of the Revised Code, any determinations made under division (J) of this section if an applicant seeks funding from the water supply revolving loan account, and any other requirements of this section and rules adopted under it, the director may establish in the agreement environmental and financial terms and conditions of the financial assistance to be offered to the applicant. If the recipient of financial assistance under this section defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section 6109.07 of the Revised Code, the director, in addition to any other available remedies, may terminate, suspend, or require immediate repayment of the financial assistance. The director also may take any enforcement action available under this chapter.

(M) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section. The rules shall be consistent with section 1452 of the Safe Drinking Water Act.

(N)(1) For the purposes of this section, appealable actions of the director pursuant to section 3745.04 of the Revised Code are limited to the following:



- (a) Adoption of the drinking water assistance management plan prepared under division (K) of this section;
 - (b) Approval of priority systems, priority lists, and written program administration policies;
 - (c) Approval or disapproval under this section of applicants' project plans submitted under section 6109.07 of the Revised Code;
 - (d) Approval or disapproval of an application for assistance.
- (2) Notwithstanding section 119.06 of the Revised Code, the director may take the final actions described in divisions (N)(1)(a) to (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.
- (3) Each action described in divisions (N)(1)(a) to (d) of this section and each approval of a plan under section 6109.07 of the Revised Code is a separate and discrete action of the director. Appeals are limited to the issues concerning the specific action appealed. Any appeal shall not include issues determined under the scope of any prior action.
- (O) The failure or inability of a public water system to obtain assistance under this section does not alter the obligation of the public water system to comply with all applicable requirements of this chapter and rules adopted under it.