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Proposed

State of Kansas

Department of Health and Environment

Notice of Hearing on Proposed Administrative Regulation

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Water, will conduct a public hearing at 10:00 a.m. Tuesday, March 21, 2023, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended public water supply regulation K.A.R. 28-15-56, regarding the public water supply project loan program.

A summary of the proposed regulation and estimated economic impact follows:

Summary of Regulation:

K.A.R. 28-15-56. Project eligibility. Aligns the proposed regulation with the statute change required by K.S.A. 2022 Supp. 65-163d that removed the prohibition against financing projects that trigger the Water Transfer Act, K.S.A. 82a-1501 through 82a-1508. Allows loans from the public water supply loan fund to finance the costs of projects that would have triggered the Water Transfer Act.

Economic Impact:

Cost to the agency: The proposed regulation will not result in increased costs to the agency.

Cost to the public and regulated community: There will be no costs related to the proposed regulation that are reasonably expected to be incurred by businesses, local governments, public utility ratepayers, or members of the public. The public water supply loan fund is a voluntary financing program for municipalities.

Costs to other governmental agencies or units: There will be no costs related to the proposed regulation that are reasonably expected to be incurred by other governmental agencies

or units because they are not eligible to use the public water supply loan fund.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE contact staff person or at the Kansas State Revolving Fund website, as listed below.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to William Carr, Kansas Department of Health and Environment, Bureau of Water Administration, Curtis State Office Bldg., 1000 SW Jackson, Suite 420, Topeka, KS 66612 or by email to William.J.Carr@ks.gov. Interested parties are encouraged to participate in the public hearing by submitting written comments.

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy of the comments for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement and environmental benefit statement may be obtained from the Kansas SRF website at <https://www.kdhe.ks.gov/518/Loan-Fund-Administration-Documents> or by contacting William Carr at William.J.Carr@ks.gov, 785-296-0735. Questions pertaining to the proposed regulation should be directed to William Carr at the contact information above.

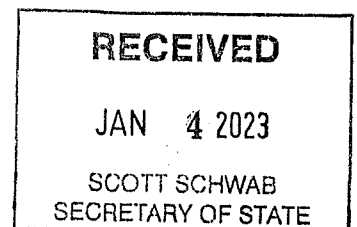
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Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement and environmental benefit statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting William Carr.

Janet Stanek
Secretary



28-15-56. Project eligibility. (a) ~~No assistance from the fund shall be provided for any water transfer project, or for any portion of a project involving a water transfer. No assistance from the fund shall be provided to any~~ of the following:

(1) Any loan applicant who has not adopted and implemented water conservation plans and practices; ;

(b) ~~(2) No assistance shall be provided to any loan applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the loan applicant to compliance; ; or~~

(c) ~~(3) No assistance shall be provided to any loan applicant lacking capacity, unless the loan applicant agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative sources of supply, or and other procedures, if the secretary determines that such these changes are required to demonstrate capacity.~~

(d) ~~(b) No assistance from the fund shall be provided for projects and activities project costs deemed ineligible for participation by the U.S. environmental protection agency. Any such projects and activities~~ These projects and project costs shall be listed in the intended use plan.
(Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 2022 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u, 65-163f, and 65-163h; effective Oct. 10, 1997; amended P-_____.)

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NOV 15 2022

DEPT. OF ADMINISTRATION

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NOV 30 2022

ATTORNEY GENERAL

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

28-15-56
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

These proposed regulation will allow loans from the public water supply loan fund to finance the costs of projects that would trigger the Water Transfer Act. The proposed amendment is needed to align the regulation with a recent statute change required by the passage of SB 358 which removed the prohibition against financing projects that trigger the Water Transfer Act (K.S.A. 82a-1501 through K.S.A. 82a-1508). K.S.A. 65-163d was amended by removing the references to the Water Transfer Act from the definition of a Project.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

This proposed regulation does not exceed the requirements of applicable federal law. The Water Transfer Act (K.S.A. 82a-1501 through K.S.A. 82a-1508) is only found in Kansas Statute, none of the contiguous states to Kansas would have laws or regulations addressing it.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation change would neither enhance or restrict business activities and growth. The public water supply loan fund can only make loans to municipalities. The only impact to businesses would be through the user rates the municipality establishes. The change to 28-15-56 regarding project eligibility would not impact rates the municipality establishes for its users. The public water supply loan fund is a voluntary financing program for municipalities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There would be no economic effect to specific businesses, sectors, public utility ratepayers, individuals, or local governments. The regulation change only serves to make public water supply loan fund project eligibility less restrictive and does not require actions or activities that change economic effects on these entities.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

No businesses would be directly affected by the proposed regulation change.

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D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

Since there are no costs related to the proposed regulation change, there are no benefits compared to costs of the proposed regulation change. The benefit to municipalities is that there are more financing options to pay for costs associated with projects that trigger the Water Transfer Act.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

No special measures need to be taken by the agency to minimize the cost and impact of the proposed regulation change since there are no cost impacts associated with it.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The methodology used to determine a \$0 cost estimate is based on the fact that the public water supply loan fund is a voluntary financing program and the proposed regulation change does not impact any financing terms and conditions.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There would be no changes to state revenues and expenditures for both the current and next fiscal year due to the implementation of the proposed regulation changes

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Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There would be no long-range economic impact of the proposed regulation change to any individual, small employers, or the general public.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

When the notice of hearing for these regulations is published in the Kansas Register, standard agency procedure will be followed, and the three above-listed organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

No special solicitations for information were made for the proposed regulation changes. However, during legislative committee hearings for the bill that amended K.S.A 65-163d, the City of Hays and the City of Russell provided testimony in favor of the statute change. Very few projects have ever triggered the water transfer act.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☒ Yes If yes, complete the remainder of Section IV.
☐ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

There is no compliance involved with the proposed regulation change. The regulation is for a voluntary financing program that can be used by municipalities. The change will expand eligible projects that can be financed by the Kansas Public Water Supply Loan Fund but the change will not require any capital or annual costs to municipalities.

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

There are no initial or annual costs of implementing the proposed regulation change. The change will expand eligible projects that can be financed by the Kansas Public Water Supply Loan Fund, and the change will not increase paperwork or costs of implementing the program.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

There are no costs that would accrue if the proposed regulation change was not adopted. Municipalities that undertake water transfer projects and would seek financing from the Kansas Public Water Supply Loan Fund would not be allowed to use the program if the regulation change is not adopted.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

There were no cost estimates made. There is no data or methodology that can be used to estimate costs for a regulation change that does not impact costs.

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