

Title 399 WAC
COMMERCE,
DEPARTMENT OF
(PUBLIC WORKS BOARD)
 (Formerly: CTED (Public Works Board))

Chapters

399-20	Public records.
399-30	Public works loans and pledges.
399-50	Ethics in public service.

Chapter 399-20 WAC
PUBLIC RECORDS

WAC

399-20-060 Office hours.

WAC 399-20-060 Office hours. Public records are available for inspection and copying from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Thursday, excluding legal holidays, or closure due to natural disaster, inclement weather, or local emergency.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-20-060, filed 2/4/09, effective 3/7/09. Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-060, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-060, filed 12/4/85.]

Chapter 399-30 WAC**PUBLIC WORKS LOANS AND PLEDGES****WAC**

399-30-031	Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance.
399-30-040	Application evaluation procedure and board deliberations—Construction and preconstruction loan programs.
399-30-042	Application evaluation procedure and board deliberations—Capital planning support.
399-30-045	Application evaluation procedure and board deliberations—Emergency loan program.
399-30-060	Loan and financing guarantee loan agreements for the construction loan program.
399-30-065	Emergency loan and financing guarantee loan agreements.

WAC 399-30-031 Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance. The board, the department of health, and the department of community, trade, and economic development jointly administer the drinking water state revolving fund and the water system acquisition and rehabilitation program, and follow the process described in chapter 246-296 WAC.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-30-031, filed 2/4/09, effective 3/7/09; 07-05-029, § 399-30-031, filed 2/13/07, effective 3/16/07.]

WAC 399-30-040 Application evaluation procedure and board deliberations—Construction and preconstruction loan programs. (1) The board will consider and priori-

tize, or disapprove, all applications for financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to responses in the application developed and approved by the board.

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Type of projects;

(iv) Type of jurisdiction;

(v) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(vi) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) Applicants will be notified in writing of board decisions.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-30-040, filed 2/4/09, effective 3/7/09; 07-05-029, § 399-30-040, filed 2/13/07, effective 3/16/07. Statutory Authority: RCW 43.155.040(5). 01-09-014, § 399-30-040, filed 4/6/01, effective 5/7/01. Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-040, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 95-11-093, § 399-30-040, filed 5/19/95, effective 6/19/95; 93-22-015, § 399-30-040, filed 10/26/93, effective 11/26/93; 92-03-052, § 399-30-040, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 88-10-009 (Order 88-02), § 399-30-040, filed 4/22/88; 87-17-013 (Order 87-16), § 399-30-040, filed 8/10/87; 86-18-009 (Resolution No. 86-12), § 399-30-040, filed 8/21/86. Statutory Authority: 1985 c 446 § 10. 86-03-051 (Resolution No. 85-17), § 399-30-040, filed 1/15/86.]

WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support. (1) The board will consider and approve, or disapprove, all applications for capital planning support loans at regular or special

meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Direct costs eligible for capital planning support are those costs directly attributable to: A systemic related plan, including capital facilities plans and capital improvement plans; comprehensive plans, environmental studies, including biological assessments or environmental assessments; or archaeological and historic preservation activities.

(3) All applications will be evaluated in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of applications which meet the requirements of WAC 399-30-030(2) to determine if the application is consistent with the policies contained in the loan application.

(d) Those applications found to be consistent with board policies may be recommended to the board for funding. All application materials will be available to the board for its deliberations. The board will approve a list of projects based on the information provided to it by the staff and the applications.

(e) The board may then adjust the list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(iv) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) The board may consult on any issue it wishes to address, with officials of jurisdictions having projects submitted for funding.

(4) Applicants will be notified in writing of board decisions.

[Statutory Authority: RCW 43.155.040(4), 09-04-100, § 399-30-042, filed 2/4/09, effective 3/7/09; 07-05-029, § 399-30-042, filed 2/13/07, effective 3/16/07. Statutory Authority: RCW 43.155.040(5), 01-09-014, § 399-30-042, filed 4/6/01, effective 5/7/01. Statutory Authority: RCW 43.155.040(4) and (5), 98-24-010, § 399-30-042, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4), 92-03-052, § 399-30-042, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040, 88-17-080 (Order 88-03), § 399-30-042, filed 8/22/88.]

WAC 399-30-045 Application evaluation procedure and board deliberations—Emergency loan program. This section implements RCW 43.155.060 and 43.155.065. The board may make low-interest or interest free loans to local governments for emergency public works projects. The emergency loan program is to financially assist eligible communities experiencing the loss of critical public works services or facilities due to an emergency, and that can demonstrate a substantial fiscal need.

(1) Eligible local governments. Applicants must meet the conditions as identified under WAC 399-30-030(2).

(2) Eligible uses of funds. Financial assistance received shall be used for the purpose of restoring the services and/or repair of the public works facilities involved in the emergency. Assistance provided may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following:

(a) Federal disaster or emergency funds, including funds from the Federal Emergency Management Agency;

(b) State disaster or emergency funds;

(c) Insurance settlements; or

(d) Litigation.

Assisted local governments must reimburse the department any moneys received from the sources listed above. The local government is obligated to make reimbursement for four years after formal project closeout. Local governments eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(3) Availability of funds. Funding will be made available on a first-come first-served basis. Only those funds specifically appropriated by the legislature from the public works assistance account shall be used to make emergency loans. That amount shall not exceed five percent of the total amount appropriated from this account in any biennium.

(4) Application process. Local governments must apply on the form provided by the board. Applications will be processed in the order received.

(5) Board deliberations—Emergency loan applications.

(a) The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(b) All applications will be accepted and evaluated in accordance with the following procedures:

(i) Applications will be accepted only when emergency funding is available.

(ii) Staff will review applications and verify that the applicant is eligible for assistance as set forth in RCW 43.155.070(1).

(iii) Staff will provide the board an evaluation of whether an emergency loan is needed based upon the information documented by the applicant and staff.

(iv) Site visits to the location of the emergency public works project will be carried out at the discretion of the board or staff.

(6) Loan terms. The board shall determine the term and interest rate(s) of emergency loans annually.

(7) Exceptions to public works trust fund policies and procedures. Except as provided in this chapter or specified in annual program guidelines, the emergency program shall follow all general administrative program policies as set for the public works trust fund.

[Statutory Authority: RCW 43.155.040(4), 09-04-100, § 399-30-045, filed 2/4/09, effective 3/7/09. Statutory Authority: RCW 43.155.040(4) and (5), 98-24-010, § 399-30-045, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4), 92-03-052, § 399-30-045, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040, 89-10-041 (Order 89-01), § 399-30-045, filed 4/28/89.]

WAC 399-30-060 Loan and financing guarantee loan agreements for the construction loan program. (1) The

board will only execute loan agreements or otherwise financially obligate funds from the public works assistance account after the legislature approves the list and accompanying appropriation, except for preconstruction, planning, and emergency loans.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects, the construction loan funds will be disbursed to the applicant local government through a loan agreement. The loan agreement will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated funding or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) The interest rates, local share requirements and loan limits will be determined annually by the board.

(c) Loans must not exceed thirty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final loan agreement before any funds are disbursed.

(4) The local government must submit for approval a scope of work, including such things as a budget and performance measures consistent with the application for financial assistance to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee loan agreements offered within ninety days after the department offers the loan agreement.

(6) The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.

(7) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

(8) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a planning, emergency or preconstruction loan agreement has been formally executed. The board or department may reimburse local governments for those construction loan costs incurred after September 1st of the year in which a construction loan was recommended for financing by the board, providing that the project is approved by law, the costs are eligible for reimbursement at the time of loan agreement execution, and there are funds available in the public works assistance account. These reimbursable costs, incurred before loan agreement execution, must be spent on eligible activities as defined by WAC 399-30-030, comply with executive order 05-05, and be consistent with the loan agreement as later executed. Any costs incurred before the execution of a construction loan agreement will not be reimbursed unless a loan agreement is executed.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-30-060, filed 2/4/09, effective 3/7/09; 07-05-029, § 399-30-060, filed 2/13/07, effective 3/16/07; 04-09-085, § 399-30-060, filed 4/20/04, effective 5/21/04. Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-060, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-060, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 88-23-095 (Order 88-08, Resolution No. 86-12), § 399-

30-060, filed 11/22/88; 86-18-009 (Resolution No. 86-12), § 399-30-060, filed 8/21/86. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-30-060, filed 12/4/85.]

WAC 399-30-065 Emergency loan and financing guarantee loan agreements.

(1) After the legislature has appropriated funds from the public works assistance account for emergency loans, the loan funds will be disbursed to the applicant local government pursuant to a loan agreement. The loan agreement will offer terms and conditions the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated revenues or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(2) The local government and the department must execute a final loan agreement before any funds are disbursed.

(3) The local government must complete a scope of work form for a loan or financing guarantee and return it to the department within ninety days after the department offers a loan or a financing guarantee loan agreement.

(4) The local government must execute any loan or financing guarantee loan agreements offered within ninety days after the department offers the loan agreement.

(5) The local government must begin work on an emergency public works project within ninety days after the loan agreement is executed.

(6) The local government must complete work on an emergency public works project within twelve months after the loan agreement is executed, unless a written request for extension is approved by the board.

(7) The board or department will not reimburse local governments for any funds spent on emergency public works projects financed through the public works assistance account before a loan agreement has been formally executed. However, if the local government has formally declared an emergency, the board may approve reimbursement of eligible costs of correcting the emergency incurred after an emergency was declared.

Any unreimbursed eligible costs for the project may be used toward local participation requirements, if any.

(8) All public works projects must comply with the competitive bid requirement of RCW 43.155.060 to the extent feasible and practicable.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-30-065, filed 2/4/09, effective 3/7/09. Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-065, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-065, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 89-10-041 (Order 89-01), § 399-30-065, filed 4/28/89.]

Chapter 399-50 WAC

ETHICS IN PUBLIC SERVICE

WAC

399-50-010	Definitions.
399-50-020	Interest in contracts or loan agreements, projects, or loans.
399-50-030	Interest in transactions.

WAC 399-50-010 Definitions. (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or loan agreement or other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Project" means public works project as defined in RCW 43.155.020(6).

[Statutory Authority: RCW 43.155.040(4), 09-04-100, § 399-50-010, filed 2/4/09, effective 3/7/09; 07-05-029, § 399-50-010, filed 2/13/07, effective 3/16/07. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4), 00-11-021, § 399-50-010, filed 5/9/00, effective 6/9/00.]

WAC 399-50-020 Interest in contracts or loan agreements, projects, or loans. (1) When a member of the public works board is beneficially interested, directly or indirectly, in a loan agreement, project, or loan that may be made by, through, or under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such loan agreement, project, or loan, the member shall:

(a) Recuse him or herself from board discussion regarding the specific loan agreement, project, or loan;

(b) Recuse him or herself from the board vote on the specific loan agreement, project, or loan; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific loan agreement, project, or loan.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a loan agreement, project, or loan when the other person bids, applies for, or otherwise seeks to be awarded the loan agreement, project, or loan.

Example 1

Board member Sam Jones is an engineering consultant. Jones performs consulting work on a regular basis for the Evergreen County public works department. The board is asked to approve an emergency public works loan for Evergreen County. Jones should recuse himself from voting on or discussing this action because he receives compensation from a "person" (Evergreen County) beneficially interested in the proposed loan.

Example 2

Board member Ima Kozy is the President and CEO of a firm that constructs roads and utilities. The board is asked to approve a list of loans for construction projects in various

locations around the state. One of the projects is in the City of Destiny, where Ima's firm frequently responds to solicitation for bids. If Ima wants her firm to be able to bid on the Destiny project, she should recuse herself from voting on this list or discussing this action.

If Ima does vote to approve the list or participates in discussing it, she will be prohibited by RCW 42.52.030 from receiving a direct or indirect beneficial interest in the loan agreement to Destiny, or from accepting compensation from another person beneficially interested in the loan agreement. Thus, neither she nor her firm may bid on the project.

[Statutory Authority: RCW 43.155.040(4), 09-04-100, § 399-50-020, filed 2/4/09, effective 3/7/09. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4), 00-11-021, § 399-50-020, filed 5/9/00, effective 6/9/00.]

WAC 399-50-030 Interest in transactions. (1) When a member of the public works board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, loan agreement, project or proposed project, loan, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, loan agreement, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

Example 3

Board member Alice Lester is a director of the Starburst Sewer District. During presentation of the annual construc-

tion roster, the board is asked to consider adding projects to the roster based on various criteria developed by staff. The board's choice of criteria will determine which additional projects will be funded. A sewer improvement project for the Starburst Sewer District is among those that may be added to the roster, depending on which criteria are selected. Lester should disclose her affiliation with Starburst and recuse herself from discussing on or voting on the criteria for funding additional projects, because she is an officer of an entity interested in a transaction before the board, specifically determination of funding criteria that will affect Starburst Sewer District.

[Statutory Authority: RCW 43.155.040(4). 09-04-100, § 399-50-030, filed 2/4/09, effective 3/7/09. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). 00-11-021, § 399-50-030, filed 5/9/00, effective 6/9/00.]