

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-454  
HOUSE BILL 1095**

AN ACT TO ESTABLISH UNIFORM CRITERIA FOR DRINKING WATER, WASTEWATER, AND STORMWATER LOANS AND GRANTS, TO CLARIFY AND REVISE THE PROCEDURES THAT APPLY TO THESE LOANS AND GRANTS TO REFLECT THE EXHAUSTION OF THE 1998 CLEAN WATER BOND PROCEEDS, AND TO PROVIDE FOR GREATER COORDINATION AMONG AGENCIES THAT MAKE LOANS AND GRANTS FOR WATER PROJECTS BY ESTABLISHING THE WATER INFRASTRUCTURE COMMISSION.

The General Assembly of North Carolina enacts:

**PART I. WATER INFRASTRUCTURE**

**SECTION 1.** The title of Chapter 159G of the General Statutes reads as rewritten:

**"Chapter 159G.  
~~North Carolina Clean Water Revolving Loan and Grant Act of 1987.~~  
Water Infrastructure."**

**SECTION 2.** G.S. 159G-1 through G.S. 159G-18 is repealed.

**SECTION 3.** Chapter 159G of the General Statutes is amended by adding the following Articles to read:

"Article 1.  
General Provisions.

**"§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

- (1) CWSRF. – The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (2) Construction costs. – The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:
  - a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.
  - b. Legal, fiscal, administrative, and contingency costs.
  - c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.
  - d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.
  - e. The cost to acquire real property or an interest in real property.
- (3) Department. – The Department of Environment and Natural Resources.
- (4) Division of Environmental Health. – The Division of Environmental Health of the Department of Environment and Natural Resources.
- (5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.

- (6) Drinking Water Reserve. – The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (7) DWSRF. – The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (8) Grant. – A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.
- (9) High-unit-cost project. – A project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period.
- (10) High-unit-cost threshold. – Either of the following amounts determined on the basis of data from the most recent federal decennial census and updated by the U.S. Department of Housing and Urban Development's annual estimated income adjustment factors:
  - a. One and one-half percent (1.5%) of the median household income in an area that receives both water and sewer service.
  - b. Three-fourths of one percent (3/4%) of the median household income in an area that receives only water service or only sewer service.
- (11) Loan. – A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.
- (12) Local Government Commission. – The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.
- (13) Local government unit. – Any of the following:
  - a. A city as defined in G.S. 160A-1.
  - b. A county.
  - c. A consolidated city-county as defined in G.S. 160B-2.
  - d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.
  - e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.
  - f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
  - g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.
  - h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.
  - i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.
- (14) Nonprofit water corporation. – A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.
- (15) Public water system. – Defined in G.S. 130A-313.
- (16) Reserved.
- (17) Reserved.
- (18) Secretary. – The Secretary of Environment and Natural Resources.
- (19) State. – The State of North Carolina.

- (20) Stormwater quality project. – A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.
- (21) Targeted interest rate project. – Either of the following types of projects:
  - a. A high-unit-cost project that is awarded a loan.
  - b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.
- (22) Treasurer. – The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.
- (23) Wastewater collection system. – A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.
- (24) Wastewater Reserve. – The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (25) Wastewater system. – A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.
- (26) Wastewater treatment works. – The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.
- (27) Water Infrastructure Fund. – The fund established in G.S. 159G-22.

**"§ 159G-21. Revenue for water projects.**

This Chapter governs the use of the following revenue:

- (1) Revenue appropriated to the Department to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of the federal funds.
- (2) Revenue appropriated to the Department to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of these funds.

**"§ 159G-22. Water Infrastructure Fund.**

(a) Fund Established. – The Water Infrastructure Fund is established as a special revenue fund. The Fund is comprised of the accounts set out in this section. The Fund provides revenue through its accounts for loans and grants as provided in this Chapter to meet the water infrastructure needs of the State. The Treasurer is responsible for distributing and investing all revenue received by the Fund. Interest and other investment income earned by the Fund accrues to it and must be allocated to the account to which the income is attributable. Accounts to which federal funds are credited must be kept separate from accounts that do not receive federal funds. A payment of the principal of or interest on a loan made from an account of the Fund must be credited to the account from which the loan was made.

(b) CWSRF. – The Clean Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for wastewater projects and the State funds required to match the federal funds. The account is established under and must be managed in accordance with Title VI of the Federal Water Quality Act of 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these federal acts and the federal regulations adopted to implement the acts. Revenue credited to the account is available in perpetuity and must

be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(c) DWSRF. – The Drinking Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for public water systems and the State funds required to match the federal funds. The account is established under and must be managed in accordance with section 130 of Title 1 of the federal Safe Drinking Water Act of 1996 as amended, 42 U.S.C. § 300J-12, to achieve the purposes of that act. The account must comply with that act and the federal regulations adopted to implement the act. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(d) Wastewater Reserve. – The Wastewater Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for wastewater systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(e) Wastewater Accounts. – The Department is directed to establish accounts within the Wastewater Reserve to administer loans and grants for wastewater collection systems, wastewater treatment works, stormwater quality projects, and nonpoint source pollution projects. The wastewater accounts must include an account for each type of loan or grant set out in G.S. 159G-33.

(f) Drinking Water Reserve. – The Drinking Water Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for public water systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(g) Drinking Water Accounts. – The Department is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34.

**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of Environmental Health must each establish a system of assigning points to applications based on the following criteria:

- (1) Public necessity. – An applicant must explain how the project promotes public health and protects the environment. A project that improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.
- (2) Effect on impaired waters. – A project that improves designated impaired waters of the State has priority.
- (3) Efficiency. – A project that achieves efficiencies in meeting the State's water infrastructure needs by one of the following methods has priority:
  - a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.
  - b. Conservation or reuse of water.
- (4) Comprehensive land-use plan. – A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the

General Statutes or Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

- (5) Flood hazard ordinance. – A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.
- (6) Sound management. – A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.
- (7) Capital improvement plan. – A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.
- (8) Coastal habitat protection. – A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan.

**"§ 159G-24. Fee imposed on a loan or grant from Wastewater Reserve or Drinking Water Reserve.**

(a) Amount. – A loan awarded from the Wastewater Reserve or the Drinking Water Reserve is subject to a fee of two and one-half percent (2 1/2%) of the loan. A grant awarded from the Wastewater Reserve or the Drinking Water Reserve is subject to a fee of one and one-half percent (1 1/2%) of the grant. The fee is payable when a loan or grant is awarded.

(b) Departmental Receipt. – The fee on a loan from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt

of the Department and must be applied to the Department's costs in administering grants from these Reserves.

**"§ 159G-25. Expenditure for emergency corrective action at a wastewater treatment works.**

(a) The Department may use revenue in any account of the Wastewater Reserve to provide funds for emergency corrective action at a wastewater treatment works under the circumstances set out in this section. The amount expended in a fiscal year for corrective action under this section may not exceed two hundred thousand dollars (\$200,000). An expenditure for emergency corrective action is authorized only under the following circumstances:

- (1) A person holding a wastewater discharge or nondischarge permit issued under Article 21 of Chapter 143 of the General Statutes is violating the terms of the permit.
- (2) The wastewater treatment works operated under the permit has a design flow capacity of no more than 100,000 gallons a day.
- (3) The Department has given the permit holder written notice of the violation.
- (4) The permit holder refuses to take the action required to comply with the permit.
- (5) The inaction by the permit holder poses a threat to public health.
- (6) The Department has informed the permit holder in writing that the Department plans to take emergency corrective action and then bring a civil action against the permit holder to recover the cost of the emergency corrective action.

(b) The Department may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action must be credited to the account in the Wastewater Reserve from which the funds were expended.

**"§ 159G-26. Annual reports on Water Infrastructure Fund.**

(a) Requirement. – The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Quality or the Division of Environmental Health. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly.

(b) Content. – The report required by this section must contain the following information concerning the accounts of the Water Infrastructure Fund:

- (1) The beginning and ending balance of the account for the fiscal year.
- (2) The amount of revenue credited to the account during the fiscal year, by source.
- (3) The total amount of loans and grants awarded from the account, by type, and the amount of any expenditure for emergency corrective action made from the account.
- (4) For each loan or grant awarded, the recipient of the award, the amount of the award, the amount of the award that was disbursed, and the amount of the award remaining to be disbursed in a subsequent fiscal year.
- (5) The amount disbursed for loans and grants awarded but not disbursed in a prior fiscal year and the amount remaining to be disbursed in a subsequent fiscal year.
- (6) An assessment of the expected impact on water quality and water supply of the projects for which the loans and grants were awarded.

"Article 2.

"Water Infrastructure Loans and Grants Administered by Department.

**"§ 159G-30. Department's responsibility.**

The Department, through the Division of Water Quality and the Division of Environmental Health, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of Environmental Health administers loans and grants from the DWSRF and the Drinking Water Reserve.

**"§ 159G-31. Entities eligible to apply for loan or grant.**

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. Other entities are not eligible for a loan or grant from these accounts.

**"§ 159G-32. Projects eligible for loan or grant.**

(a) CWSRF and DWSRF. – Federal law determines whether a project is eligible for a loan or grant from the CWSRF and the DWSRF. A project must meet the eligibility requirements set under federal law.

(b) Wastewater Reserve. – The Department is authorized to make loans and grants from the Wastewater Reserve for the following types of projects:

- (1) Wastewater collection system.
- (2) Wastewater treatment works.
- (3) Stormwater quality project.
- (4) Nonpoint source pollution project.

(c) Drinking Water Reserve. – The Department is authorized to make loans and grants from the Drinking Water Reserve for public water system projects.

**"§ 159G-33. Loans and grants available from Wastewater Reserve.**

(a) Types. – The Department is authorized to make the types of loans and grants listed in this subsection from the Wastewater Reserve. Each type of loan or grant must be administered through a separate account within the Wastewater Reserve.

- (1) General. – A loan or grant is available for a project authorized in G.S. 159G-32(b).
- (2) High-unit-cost grant. – A high-unit-cost grant is available for the portion of the construction costs of a wastewater collection system project or a wastewater treatment works project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.
- (3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a wastewater collection system or wastewater treatment works that either is not in compliance with its permit limits or, as identified in the most recent inspection report by the Department under G.S. 143-215.3, is experiencing operational problems and is at risk of violating its permit limits.
- (4) Emergency loan. – An emergency loan is available in the event the Secretary certifies that a serious public health hazard related to the inadequacy of an existing wastewater collection system or wastewater treatment works is present or imminent in a community.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan.

**"§ 159G-34. Loans and grants available from Drinking Water Reserve.**

(a) Types. – The Department is authorized to make the types of loans and grants listed in this section from the Drinking Water Reserve. Each type of loan or grant must be administered through a separate account within the Drinking Water Reserve.

- (1) General. – A loan or grant is available for a project for a public water system.

- (2) High-unit-cost grant. – A grant is available for the portion of the construction costs of a public water system project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.
- (3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a public water system that does not comply with State law or the rules adopted to implement that law.
- (4) Emergency loan. – An emergency loan is available to an applicant in the event the Secretary certifies that either a serious public health hazard or a drought emergency related to the water supply system is present or imminent in a community.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan.

**"§ 159G-35. Criteria for loans and grants.**

(a) CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts must meet the criteria set under federal law. The Department is directed to establish through negotiation with the United States Environmental Protection Agency the criteria for evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to the criteria. The Department must incorporate the negotiated criteria and priorities in the Capitalization Grant Operating Agreement between the Department and the United States Environmental Protection Agency. The criteria and priorities incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The common criteria in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Reserves. – The common criteria in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve.

**"§ 159G-36. Limits on loans and grants.**

(a) CWSRF and DWSRF. – Federal law governs loans and grants from the CWSRF and the DWSRF. An award of a loan or grant from one of these accounts must be consistent with federal law.

(b) Reserve Cost Limit. – The amount of a loan or grant from the Wastewater Reserve or the Drinking Water Reserve may not exceed the construction costs of a project. A loan or grant from one of these Reserves is available only to the extent that other funding sources are not reasonably available to the applicant.

(c) Reserve Recipient Limit. – The following limits apply to a loan or grant made from the Wastewater Reserve or the Drinking Water Reserve to the same local government unit or nonprofit water corporation:

- (1) The amount of loans awarded for a fiscal year may not exceed three million dollars (\$3,000,000).
- (2) The amount of loans awarded for three consecutive fiscal years for targeted interest rate projects may not exceed three million dollars (\$3,000,000).
- (3) The amount of high-unit-cost grants awarded for three consecutive fiscal years may not exceed three million dollars (\$3,000,000).
- (4) The amount of technical assistance grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars (\$50,000).

**"§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan

or grant from the DWSRF or the Drinking Water Reserve must be filed with the Division of Environmental Health of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article.

**"§ 159G-38. Environmental assessment and public hearing.**

(a) Required Information. – An application submitted under this Article for a loan or grant for a project must state whether the project requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the application does not identify an exclusion in the North Carolina Environmental Policy Act, it must include an environmental assessment of the project's probable impacts on the environment.

(b) Division Review. – If, after reviewing an application, the Division of Water Quality or the Division of Environmental Health, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act.

(c) Hearing. – The Division of Water Quality or the Division of Environmental Health, as appropriate, may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application.

**"§ 159G-39. Review of applications and award of loan or grant.**

(a) Point Assignment. – The Division of Water Quality or the Division of Environmental Health, as appropriate, must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive.

(b) Initial Consideration. – The Division may consider an application for an emergency loan from the Wastewater Reserve or the Drinking Water Reserve at any time. The Division must consider all other loan applications and all grant applications filed during an application period at the same time in order to rank the applications.

(c) Reconsideration. – When an application's rank is too low to receive an award of a loan or grant for an application period, the Division must include the application with those considered for the next application period. If the application's rank is again too low to receive an award, the application is not eligible for consideration in a subsequent application period. An applicant whose application does not receive an award after review in two application periods may file a new application.

(d) Notification of Decision. – When the Division determines that an application's rank makes it eligible for an award of a loan or grant, the Division must send the applicant a letter of intent to award the loan or grant. The notice must set out any conditions the applicant must meet to receive an award of a loan or grant. When the applicant satisfies the conditions set out in the letter of intent, the Division must send the applicant an offer to award a loan or grant. The applicant must give the Division written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued.

**"§ 159G-40. Terms of loan and execution of loan documents.**

(a) Approval by Local Government Commission. – The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation in accordance with the factors set out in G.S. 159-153.

(b) Interest Rate and Maturity. – The interest rate payable on and the maximum maturity of a loan are subject to the following limitations:

- (1) Interest rate. – The interest rate for a loan may not exceed the lesser of four percent (4%) or one half the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the Department, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target.
- (2) Maturity. – The maximum maturity for a loan for a project that is not a high-unit-cost project may not exceed 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a high-unit-cost project is 30 years or the project's expected life, whichever is shorter.

(c) Security for Loan. – A local government unit may pledge any of the following, alone or in combination, as security for an obligation to repay the principal of and interest on a loan awarded under this Article:

- (1) User fee revenues derived from operation of the wastewater system or public water system that benefits from the project for which the loan is awarded.
- (2) A mortgage, deed of trust, security interest, or similar lien on part or all of the real and personal property comprising the wastewater system or public water system that benefits from the project for which the loan is awarded.
- (3) Its full faith and credit if it meets the requirements of Article 4 of Chapter 159 of the General Statutes.
- (4) Nontax revenue not included in subdivision (1) of this subsection.

(d) Debt Instrument. – A local government unit and a nonprofit water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units and nonprofit water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding.

**"§ 159G-41. Withdrawal of loan or grant.**

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years

after the date of the letter, unless the Department finds that the applicant has good cause for the failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the Department finds that the applicant has good cause for the failure. If the Department finds good cause for an applicant's failure, the Department must set a date by which the applicant must take action or forfeit the loan or grant.

**"§ 159G-42. Disbursement of loan or grant.**

The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested.

**"§ 159G-43. Inspection of project.**

(a) Authority. – The Department may inspect a project for which it awards a loan or grant under this Article to determine the progress made on the project and whether the construction of the project is consistent with the project described in the loan or grant application. The inspection may be performed by personnel of the Department or by a professional engineer licensed under Chapter 89C of the General Statutes.

(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

- (1) Is an officer or employee of the local government unit or nonprofit water corporation that received the loan or grant award for the project.
- (2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made.

**"§ 159G-44. Rules.**

The Department may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the Department. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The Department must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy.

"Article 3. Reserved.

"Article 4.

"State Water Infrastructure Commission.

**"§ 159G-65. State Water Infrastructure Commission.**

(a) Purpose. – The State Water Infrastructure Commission is established in the Office of the Governor. The purpose of the Commission is to identify the State's water infrastructure needs, develop a plan to meet those needs, and monitor the implementation of the plan.

(b) Membership. – The Commission consists of 13 members as follows:

- (1) The Secretary of Commerce or a Department of Commerce employee designated by the Secretary who is familiar with the State programs that fund water or other infrastructure improvements for the purpose of promoting economic development.
- (2) The Secretary of Environment and Natural Resources or a Department of Environment and Natural Resources employee designated by the Secretary who is familiar with the water infrastructure financing, regulatory, and technical assistance programs of the Department.
- (3) The President of the Rural Economic Development Center or a Rural Center employee designated by the President who is familiar with the water infrastructure financing programs of the Rural Center.
- (4) The Executive Director of the Clean Water Management Trust Fund or a Trust Fund employee designated by the Executive Director who is familiar with wastewater, drinking water, and stormwater issues.

- (5) The Director of the Local Government Commission or an employee of the State Treasurer's Office designated by the Director who is familiar with the functions of the Commission.
- (6) The Executive Director of the League of Municipalities or a League employee designated by the Executive Director who is familiar with the League's programs.
- (7) The Executive Director of the North Carolina Association of County Commissioners or an Association employee designated by the Executive Director who is familiar with the Association's programs.
- (8) One member appointed by the Chancellor of North Carolina State University.
- (9) An engineer appointed by the American Council of Engineering Companies.
- (10) One member appointed by the Water Resources and Research Institute.
- (11) One member appointed by the Governor who is a representative of a local government wastewater system or public water system.
- (12) One member appointed by the President Pro Tempore of the Senate.
- (13) One member appointed by the Speaker of the House of Representatives.

(c) Terms. – The members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives serve two-year terms. The other members, who are ex officio members or designees of those members, serve until they are no longer in office or are replaced with another designee. Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(d) Chair. – The Governor appoints the initial chair of the Commission. The chair appointed by the Governor must call the first meeting, at which the members must elect a chair. The Chair serves a term of one year. The Commission must elect a chair annually.

(e) Meetings. – The Commission must meet at least four times a year and may meet as often as needed. A majority of the members of the Commission constitutes a quorum for the transaction of business. The affirmative vote of a majority of the members present at a meeting of the Commission is required for action to be taken by the Commission.

(f) Vacancies. – A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made. The term of an appointment to fill a vacancy is for the balance of the unexpired term.

(g) Compensation. – The Commission members receive no salary or other monetary compensation for serving on the Commission.

**"§ 159G-66. Duties of the Commission.**

The Commission has the following duties:

- (1) To assess and make recommendations on the role of the State in the development and funding of wastewater, drinking water, and stormwater infrastructure in the State.
- (2) To analyze the adequacy of projected funding to meet projected needs over the next five years.
- (3) To propose State priorities for funding.
- (4) To make recommendations on ways to maximize the use of current funding resources, whether federal, State, or local, and to ensure that funds are used in a coordinated manner.
- (5) To review the application of management practices in wastewater, drinking water, and stormwater utilities and determine the best practices.

- (6) To assess the role of public-private partnerships in the future provision of utility service.
- (7) To assess the application of the river basin approach to utility planning and management.
- (8) To assess the need for a "troubled system" protocol.

**"§ 159G-67. Commission reports.**

The Commission must publish an annual report by 1 November of each year on its activity and findings. The Commission must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly. The report must include any recommendations of the Commission that require action by the General Assembly to implement."

**PART II. CLEAN WATER MANAGEMENT TRUST FUND**

**SECTION 4.** G.S. 113A-252 of the General Statutes reads as rewritten:

**"§ 113A-252. Definitions.**

~~As used~~ The following definitions apply in this Article:

- (1) Council. – The advisory council for the Clean Water Management Trust Fund.
- (2) ~~Economically Distressed Units of Local Government. — Counties designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A and any cities located in those counties.~~ distressed local government unit. – An economically distressed county, as defined in G.S. 105-129.3, or a local government unit located in that county.
- (3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.
- (4) Land. – Real property and any interest in, easement in, or restriction on real property.
- (4a) Local government unit. – Defined in G.S. 159G-20.
- (4b) Stormwater quality project. – Defined in G.S. 159G-20.
- (5) Trustees. – The trustees of the Clean Water Management Trust Fund.
- (6) Wastewater collection system. – Defined in G.S. 159G-20.
- (7) Wastewater treatment works. – Defined in G.S. 159G-20."

**SECTION 5.** G.S. 113A-253 reads as rewritten:

**"§ 113A-253. Clean Water Management Trust Fund: established. Fund.**

(a) ~~Fund Established. – There is established a Clean Water Management Trust Fund in the State Treasurer's Office that shall be used to finance projects to clean up or prevent surface water pollution in accordance with this Article. The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:~~

- (1) Annual appropriations under G.S. 143-15.3B.
- (2) Scenic River special registration plates under G.S. 20-81.12.

(b) ~~Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.~~

(c) ~~Fund Purposes. – Moneys from the Fund are appropriated annually and to finance projects to clean up or prevent surface water pollution in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:~~

- (1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt

incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

- (2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (5) To repair failing ~~waste treatment systems~~ wastewater collection systems and wastewater treatment works if (i) ~~an application has first been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and the application was denied during the latest review cycle;~~ (ii) the repair is a reasonable remedy for resolving an existing waste treatment problem; and (iii) ~~problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community. Priority shall be given to economically distressed units of local government.~~
- (6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand ~~waste treatment systems~~ wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections. ~~Priority shall be given to economically distressed units of local government.~~
- (7) To ~~improve stormwater controls and management practices.~~ finance stormwater quality projects.
- (8) To facilitate planning that targets reductions in surface water pollution.
- (9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than two percent (2%) of the annual balance of the Fund on ~~1 July~~ or a total sum of one million two hundred fifty thousand dollars (\$1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff."

**SECTION 6.** G.S. 113A-254 reads as rewritten:

"§ 113A-254. ~~Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement. Grant requirements.~~

(a) Eligible ~~Grant~~ Applicants. – Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.
- (2) A local government ~~or other political subdivision of the State or a combination of such entities.~~ unit.
- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(a1) Criteria. – The criteria developed by the Trustees under G.S. 113A-256 apply to grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and the criteria set out in this section also apply to wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. The common criteria set in G.S. 159G-23 have priority over the criteria set under this Article for wastewater collection system projects, wastewater treatment works projects,

and stormwater quality projects. An application for a wastewater collection system project or a wastewater treatment works project that serves an economically distressed local government unit has priority.

(b) ~~Grant-Matching Requirement.~~ – The Board of Trustees shall establish matching requirements for grants awarded under this Article. The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) ~~Grants Not Available to Satisfy Compensatory Mitigation Requirements.~~ Restriction. – No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(d) Wastewater Limits. – A wastewater collection system project or a wastewater treatment works project is eligible for a grant under this Article only if it is a high-unit-cost project, as defined in G.S. 159G-20. A grant made under this Article for a wastewater collection system project or a wastewater treatment works project is subject to the cost limits and recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.

(e) Stormwater Limits. – The amount of a grant awarded under this Article for a stormwater quality project may not exceed the construction costs of the project. The total amount of grants awarded under this Article to the same recipient for stormwater quality projects for a fiscal year may not exceed the limit set in G.S. 159G-36(c)(1) for grants to the same recipient from the Wastewater Reserve.

(f) Withdrawal. – An award of a grant under this Article is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant."

### **PART III. CONFORMING CHANGES**

**SECTION 7.** G.S. 143-215.3A(a)(3) is repealed.

**SECTION 8.** G.S. 143-215.3B is repealed. Funds in the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund are transferred to the Wastewater Reserve of the Water Infrastructure Fund established in G.S. 159G-22.

**SECTION 9.** Part 30 of Article 7 of Chapter 143B of the General Statutes is repealed.

**SECTION 10.** G.S. 159-153(a1) reads as rewritten:

~~"(a1) Commission Approval Required for Nonprofit Water Corporation Loans From the Clean Water Revolving Loan and Trust Fund. In addition to the requirements of Chapter 159G of the General Statutes, approval by the Commission in accordance with this section is required before a nonprofit water corporation may be eligible to receive a revolving loan or grant under Chapter 159G of the General Statutes.~~ Nonprofit Water Corporation. – A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section."

### **PART IV. EFFECTIVE DATE**

**SECTION 11.** The first reports required by G.S. 159G-26 and G.S. 159G-67, as enacted by Section 3 of this act, shall be published on or before 1 November 2006.

**SECTION 12.** This act becomes effective 1 January 2006.  
In the General Assembly read three times and ratified this the 24<sup>th</sup> day of August, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 5:41 p.m. this 29<sup>th</sup> day of September, 2005