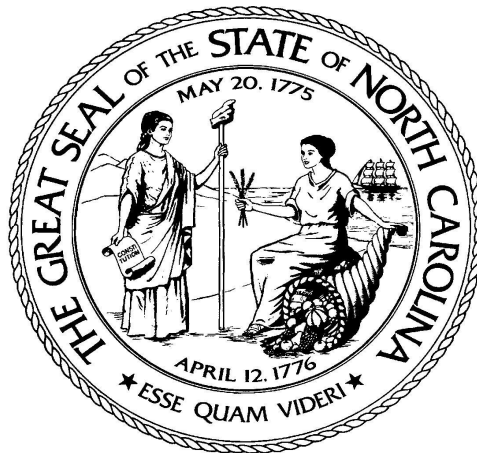


NORTH CAROLINA GENERAL ASSEMBLY



LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE

REPORT TO THE 2010 SESSION of the 2009 GENERAL ASSEMBLY

MAY 2010

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TRANSMITTAL LETTER

Members of the 2009 General Assembly, Regular Session 2010:

Attached for your consideration is the interim report of the Legislative Study Commission on Water and Wastewater Infrastructure established pursuant to Part 43 of S.L. 2009-574. The Legislative Study Commission on Water and Wastewater Infrastructure respectfully submits the following report.

Sen. Charles Woodrow Albertson
Co-Chair

Rep. James Walker Crawford, Jr.
Co-Chair

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BACKGROUND AND INTRODUCTION

Pursuant to Part 43 of S.L. 2009-574, the General Assembly established the Legislative Study Commission on Water and Wastewater Infrastructure. The 17-member Commission consists of four members of the House of Representatives, appointed by the Speaker of the House; four members of the Senate, appointed by the President Pro Tempore of the Senate; two members appointed by the Governor; and seven public members or their designees. The Commission was directed to “focus on the development of an ongoing process to identify and regularly report to the North Carolina General Assembly on water and wastewater needs,” along with other specific tasks.

The Commission met in full five times during the 2009-2010 interim, as follows:

November 10, 2009 - Legislative Office Building, Raleigh

December 14, 2009 - Legislative Office Building, Raleigh

January 20, 2010 - Legislative Office Building, Raleigh

April 22, 2010 - Legislative Office Building, Raleigh

May 11, 2010 – Legislative Office Building, Raleigh

At its January 20, 2010 meeting, the Commission established four working groups from its membership to evaluate and discuss specific tasks. The working groups met on numerous occasions in February, March, and April 2010, and the Commission received the final reports of the working groups on April 22, 2010. The working group reports and the other comments submitted by Commission members and interested parties formed the basis for the legislative proposals contained in this report.

This interim report provides a summation of the Commission’s activities to date. The Commission anticipates continuing its investigation of water and wastewater infrastructure funding issues following the 2010 Session of the General Assembly and will submit a final report, including legislative proposals and recommendations, prior to the convening of the 2011 General Assembly.

A complete record of the Commission proceedings, including minutes from each meeting, is available in the Commission notebook filed in the Legislative Library. Copies of the presentations made and handouts distributed to the Commission are available on the Commission’s website at:

<http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=59>.

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COMMISSION PROCEEDINGS

The Commission conducted a review of water and wastewater infrastructure issues during the 2009-2010 legislative interim. The following Commission agendas provide an overview of the information received by the Commission to date. Handouts and other materials distributed at these meetings can be viewed on the Commission website at: <http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=59>.

November 10, 2009 – 10:00 AM
Legislative Office Building, Room 414
300 North Salisbury
Raleigh, North Carolina
Agenda

1. Chair's Remarks
 Sen. Charles W. Albertson, Co-Chair, Presiding
 Rep. James W. Crawford, Co-Chair
2. Commission Charge
 Staff
3. Needs Assessment
 Richard Whisnant, Professor of Public Law and Government, School of
 Government, University of North Carolina

 Patrick Woodie, Vice President, Rural Economic Development Center

 Robin W. Smith, Assistant Secretary for the Environment
 Department of Environment and Natural Resources

 Dale Carroll, Deputy Secretary, Department of Commerce

 Richard Rogers, Executive Director, Clean Water Management Trust Fund
4. Update on Funders Cooperation Letter
 Richard Rogers, Executive Director, Clean Water Management Trust Fund
5. Commission Discussion and Announcements
6. Adjournment

December 14, 2009 – 1:00 PM
Legislative Office Building, Room 544
300 North Salisbury
Raleigh, North Carolina
Agenda

1. Chair's Remarks
 Sen. Charles W. Albertson, Co-Chair
 Rep. James W. Crawford, Co-Chair, Presiding
2. Water/Wastewater Finance and Government
 Jeff Hughes, Director, Environmental Finance Center, University of North Carolina
3. Water Allocation Study
 Richard Whisnant, Professor of Public Law and Government, School of Government, University of North Carolina
4. State Water Infrastructure Commission Overview and Update
 Bill Holman, Director of State Policy, Nicholas Institute for Environmental Policy Solutions, Duke University
5. State Water Supply Plan & Local Water Supply Plans
 Tom Reeder, Director, Division of Water Resources, Department of Environment and Natural Resources
6. Commission Discussion and Announcements
7. Adjournment

January 20, 2010 – 1:00 PM
Legislative Office Building, Room 544
300 North Salisbury
Raleigh, North Carolina
Agenda

1. Chair's Remarks
 Sen. Charles W. Albertson, Co-Chair, Presiding
 Rep. James W. Crawford, Co-Chair
2. Staff Comments
 Staff
3. Pollutant impacts on water quality and water supply
 Coleen H. Sullins, Director, Division of Water Quality, Department of
 Environment and Natural Resources
4. Best practices to improve the coordination of water and wastewater infrastructure funding
 Jeff Hughes, Director, Environmental Finance Center, School of Government,
 University of North Carolina at Chapel Hill
5. Agricultural water use issues
 Mitch Peele, Senior Director of Public Policy, North Carolina Farm Bureau
 Federation
6. Commission Discussion and Announcements
7. Adjournment

April 22, 2010 – 10:00 AM
Legislative Office Building, Room 643
300 North Salisbury
Raleigh, North Carolina
Agenda

1. Chair's Remarks
 - Sen. Charles W. Albertson, Co-Chair
 - Rep. James W. Crawford, Co-Chair, Presiding
2. Working Group #1: Identifying and reporting infrastructure needs
 - Robin Smith, Assistant Secretary for the Environment, Department of Environment and Natural Resources (DENR)
3. Working Group #2: Infrastructure funding priorities
 - Arthur L. "Buck" Kennedy, Council Member, Town of Garner
 - Nick Tosco, Legislative Specialist, North Carolina League of Municipalities
4. Working Group #3: Financing the current critical gaps
 - Representative Jim Crawford
5. Working Group #4: Long-term state assistance and financing
 - Mark Bondo, Fiscal Analyst, Fiscal Research Division
6. Commission Discussion and Announcements
7. Adjournment

WORKING GROUP PROCEEDINGS

Following the January 20, 2010 meeting of the Commission, the Co-Chairs requested that Commission members divide into the following work groups to allow for more informal discussion of the issues before the Commission.

Working Group #1: Identifying and reporting infrastructure needs

Charge: Recommend methods and processes to provide information to the General Assembly and to the public on an annual basis that will detail the current status of water and wastewater infrastructure needs, the activities of funding entities to meet those needs (an annual report on the amounts of assistance provided), and the estimated future needs for publicly-assisted infrastructure. (Tasks 2, 3, & 7d)

Group Leader: Robin Smith
Tori Small
Mitch Peele
Richard Rogers
Sen. David Hoyle
Staff person: Emily Johnson

Working Group #2: Infrastructure funding priorities

Charge: Review the infrastructure funding priorities currently set out in state statutes and session law and identify gaps between current priorities and available funds, between the priorities and current or emerging needs, and between the priorities and the flexibility communities may require to respond to urgent and critical needs, including encouraging year-round water conservation as a demand management tool, incentives for regionalization, and appropriate levels of local support. (Tasks 4 & 6)

Group Leaders: David Thompson (Kevin Leonard)
Ellis Hankins (Councilman Buck Kennedy)
Bill Holman
Sen. Tom Apodaca
Staff person: Tim Dodge

Working Group #3: Financing the current critical gaps

Charge: Review available information and recommend infrastructure funding priorities to ensure that funds are used to meet the state's most pressing needs, especially those needs facing communities with severe financial constraints and those needs that do not easily fall within the top priorities for federally-assisted programs. (Task 5)

Group Leaders : Rep. Jim Crawford
Sen. A. B. Swindell
Billy Ray Hall
Dale Carroll
Staff person: Kristin Walker

Working Group #4: Long-term state assistance and financing

Charge: Examine the options and determine the parameters for on-going state assistance to address water and wastewater infrastructure needs in North Carolina, including potential sources for assistance, the potential allocation methods, and the types of activities the sources and allocations might support.

Group Leaders: Sen. Charlie Albertson
Rep. Bill Owens
Rep. Cullie Tarleton
Rep. Mitch Gillespie
Staff person: Mark Bondo

The reports for each of the working groups are included in the following pages.

Working Group #1: Identifying and reporting infrastructure needs

I. Existing Information on Infrastructure Needs

EPA Needs Surveys for the State Drinking Water and Clean Water Revolving Funds

How the surveys are done: Conducted every 4 years; limited to publicly owned water/wastewater systems

EPA Drinking water survey: All systems with > 100,000 customers surveyed; a sample of systems with > 3,000 and < 100,000 customers.

EPA uses modeling to project needs of systems serving < 3,000.

EPA Wastewater survey: Sent to 500 municipalities, 100 counties, engineers and other public wastewater utilities. Covers wastewater, stormwater and nonpoint source needs. Must be supported by engineering reports and capital improvement plans.

Needs that may not be captured: Purely growth-related projects may not be captured in the surveys, because there are limitations on use of the State Revolving Funds for those projects.

N.C. Rural Center Water 2030 Report

Description: A report on statewide water/wastewater needs completed in 2005. The capital needs inventory looked at both near-term capital improvement needs and needs related to growth projected through 2030. Funded as a one-time overview, Water 2030 provides a snapshot of projected infrastructure needs.

How it was done: The Rural Center sent a survey to the owners of all public systems owning or operating drinking water, sewer or stormwater utilities.

- Asked system owners to confirm 1998 water and sewer system boundaries (by reference to the 1998 Rural Center survey and CGIA maps) and to note any changes in service area boundaries since then. (85 systems were mapped in Water 2030.)
- Requested information on rate structure.
- Requested information on future infrastructure needs based on: 1. The capital improvement plan for 2005-2010; and 2. Projected growth (2011-2030).

Working Group #1: Identifying and reporting infrastructure needs

- Not limited to projects eligible for federal State Revolving Fund awards, so may have captured more economic development and growth-related needs than the EPA surveys.

II. GAPS IN CURRENT INFORMATION

- Regularly updated information on infrastructure needs related to economic development and population growth
- Current information on water/wastewater system service areas. (Note: DENR is working with the Environmental Finance Center at UNC on a project to create a database of water system service areas.)
- Information on drinking water needs does not include the cost of proposed reservoir construction (EPA specifically excludes those costs)
- Infrastructure needed to address failing water/wastewater systems
- Infrastructure needs related to water system efficiency (i.e., addressing water loss)

III. AGRICULTURAL WATER RESOURCE INFRASTRUCTURE

In 2008, DENR's Division of Soil and Water Conservation surveyed farmers on needs related to drought response projects. That survey identified water supply needs in the area of well construction and water storage (i.e., construction of farm ponds for irrigation and other purposes). The agricultural needs survey covers water supply infrastructure on private lands for private use. As a result, those needs fall outside the scope of the Rural Center 2030 Report and the ongoing EPA needs surveys which focus on public infrastructure needs.

The N.C. Farm Bureau reported that agriculture leaders are in the process of developing a strategic plan for protecting agriculture water resources. The plan, which is expected to be complete in the fall of 2010, will identify: current and future agriculture water needs; ways to ensure those needs are met; water conservation practices; and water efficiency measures. The Farm Bureau has proposed to report those needs to the General Assembly every five years.

Working Group #1: Identifying and reporting infrastructure needs

IV. WORKING GROUP DRAFT RECOMMENDATIONS

1. Build on the base of the existing EPA water/wastewater infrastructure survey process. Supplement the federal survey with a state-only survey to gather additional information on economic development and growth related infrastructure needs; water system efficiency measures; and costs related to development of new water sources.
2. Move toward requiring water/wastewater systems to base estimated infrastructure needs on an asset management plan.
3. Estimate a contingency necessary for emergency projects to address failing water/wastewater systems.
4. Use the surveys and estimates of emergency infrastructure needs as the basis for an updated report to the General Assembly every 4 years on combined water/wastewater infrastructure needs.
5. Incorporate water infrastructure needs into local water supply plans (updated every 5 years).
6. Agricultural agencies and organizations should continue to work with farmers to identify agricultural water infrastructure needs that are not accounted for in the survey of public water/wastewater infrastructure needs and report those needs to the General Assembly every 5 years.

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Working Group #2: Infrastructure Funding Priorities

TO: The Honorable Charles Albertson, Co-Chairman
The Honorable James Crawford, Co-Chairman
Legislative Study Commission Water/Wastewater Infrastructure

FROM: Working Group # 2

cc: Staff to the Legislative Study Commission on Water/Wastewater
Infrastructure

SUBJECT: Recommended Strategies for Perceived Gaps in Statutory Requirements
Involving Water/Wastewater Infrastructure

DATE: April 22, 2010

At the conclusion of the Water/Wastewater Infrastructure Committee meeting on January 20th, Senator Albertson as Chair of the Commission, established four (4) working groups to further the efforts of the Commission and carry out the charge established in the enabling legislation (Session Law 2009-574, Sec. 43.3).

Our Working Group # 2, entitled Infrastructure Funding Priorities, was charged with the responsibility to *"review the infrastructure funding priorities currently set out in state statutes and session law and identify gaps between current priorities and available funds, between the priorities and current or emerging needs, and between the priorities and the flexibility communities may require to respond to urgent and critical needs, including encouraging year-round water conservation as a demand management tool, incentives for regionalization, and appropriate levels of local support."*

The Working Group's membership included: The NC League of Municipalities (Buck Kennedy), The NC Association of County Commissioners (Jim Blackburn), Bill Holman-Director of State Policy at the Nicholas Institute for Environmental Policy Solutions and Senator Tom Apodaca. We were given 90 days to meet, deliberate and report back to the Commission at the meeting on April 22, 2010. Our Working Group met twice, once on March 4th at 3:00 pm and once on March 11th at 10 am. Working group members discussed and deliberated various policy recommendation options that could address the issues raised in the Working Group charge. With assistance of Tim Dodge, Staff Attorney with the Research Division of the General Assembly and legislative contact for Working Group 2, our working group developed five (5) legislative strategies. Working Group #2 proposes adoption of the following recommendations for consideration by the General Assembly.

Working Group #2: Infrastructure Funding Priorities

Recommended Strategies for Perceived Gaps in Statutory Requirements Involving Water/Wastewater Infrastructure

Work Group #2

April 22, 2010

Regionalization:

Recommendation:

- Amend G.S. 159G-23 to establish “Regionalization” as a common criterion.

Such an addition will provide flexibility to funding agency programs and will place additional emphasis on the emerging issues relating to drought, water shortages due to increased demands and efficiency through regionalization

Commentary:

The benefits that accrue from regionalization have increased in importance in recent years in addressing water supply issues in the face of droughts and increased water and wastewater demands due to rapid growth. Examples of such benefits include the economies of scale and enhanced efficiencies and effectiveness of operations. Funding agencies need to modify the priority criteria to enhance the value of regionalization. In order to effectively manage the use of grant and loan funds, the enhanced priority criterion/criteria should be applied to only those project elements that constitute the regional interconnection.

Note 1: At present, funding agencies utilize this criterion in their priority ranking process. Increasing the priority points may provide the necessary incentive for potential applicants to make this a priority for their local unit of government or region.

Note 2: At present, an application for a “regional” infrastructure project can be in the name of whichever unit of local government has the demographic profile that rates the highest on the priority-criteria point scale. Project elements that address local growth or expansion efforts should not be accorded the same priority as the actual interconnection project segment in an effort to effectively manage the use of grant and loan funds.

Working Group #2: Infrastructure Funding Priorities

Qualifying Threshold:

Recommendation:

- Amend G.S. 159G-20 and/or G.S. 159G-23 to establish ascending High Unit Cost (HUC) Criteria above the current threshold of 1.5% of the Median Household Income.

Commentary:

The statutory threshold for meeting the High Unit Cost (HUC) priority criterion (and grant eligibility) is currently established as combined water and sewer rates being 1.5% of the Median Household Income (MHI). Since implementation of the statutory requirement, numerous units of local government have increased their water and sewer rates to the point where approximately 67% of local government utilities currently meet this threshold for grant funding eligibility. The minimum criterion has been effective in achieving the statutory objective of local governments increasing utility system revenues in order to adequately operate and maintain their system(s). The HUC threshold is no longer effective in identifying those local units of government that are in greatest need of financial assistance. The minimum threshold of 1.5% of MHI should remain in place as the new Census data will certainly lower the percentage of local government utilities meeting the threshold. An ascending scale of priority points should be established to identify and reward those applicants in true financial need and whose water and sewer rates far exceed the minimum criterion.

Note 1: With an ascending scale above the current minimum criterion, the limited sources of grant funding will be more effectively utilized.

Note 2: An ascending level of priority points will continue to allow applicants only meeting the minimum criterion to compete for funding as other factors such as the applicant's "ability to pay", expressed in multiple criteria, come into play.

Working Group #2: Infrastructure Funding Priorities

Quality and Quantity:

Recommendation:

- Amend G.S. 159G-23 to establish “Drought Management” as a common criterion.

Such an addition will provide flexibility to funding agency programs and will place additional emphasis on the emerging issues relating to drought and water shortages due to increased demands. The new criterion will compliment the emphasis on efficiency through regionalization

- Amend G.S. 143-355.4 and/or G.S. 159G-35 to allow the construction of water supply reservoirs as an eligible project activity/cost.

Current criteria of the CWSRF and the DWSRF loan and grant programs prohibit the use of State funds for the construction of water supply reservoirs.

Commentary:

Current program criteria seem to favor infrastructure projects that promote water quality/public health over water quantity (supply). The recent droughts have heightened awareness and this apparent “gap”. The greater water supply demands appear to be located in the Piedmont region. Unfortunately, the more affluent communities are located in the Piedmont as well which translates into limited access to available funds. Modifying current priority criteria will place more emphasis on objective statewide water supply needs. Current funding criteria prohibit the use of N.C. loans and grants for the construction of water supply reservoirs. Planning for such infrastructure improvements requires several years and even a limited incentive would help promote this option in drought management.

Note 1: At least one funding agency has addressed the drought issue by setting aside funds specifically to such crisis issues. Modifying the criteria relating to water supply in all funding agencies could not only address water supply/drought related issues but also attenuate issues related to regionalization.

Note 2: The water allocation study recently completed by the N.C. Environmental Review Commission addresses issues of meeting the increasing demand on water supplies in North Carolina. A critical review of the study may shed additional light on potential gaps between current legislation and the actual funding and implementation of water supply initiatives.

Working Group #2: Infrastructure Funding Priorities

Sustainability: (System Maintenance)

Recommendation:

- Empower the Local Government Commission to:
 1. Require local government annual audit statements and notices of consistently failing systems be sent to state funding agencies for the purpose of reporting on “system sustainability” and to what extent the water and sewer rates of each system are sufficient to sustain operations as well as debt service.
 2. Require a capital reserve fund for the water and sewer utility be established and maintained.
 3. Review applications for grant funding to ensure that applicants’ grant match is indeed a local share as opposed to another grant.
 4. Develop absolute benchmarks that should be met for proper investing in water and sewer infrastructure specifically.

Commentary:

The implied objective in the statutes relating to infrastructure funding is for all applicants for funding to provide for proper operation and maintenance of their systems to be fiscally responsible and sound. Translating those objectives into funding priority categories and/or criteria can be challenging.

Past funding criteria have included a provision for the applicant to establish and maintain a capital reserve fund to help offset the cost of system maintenance and repairs. Criteria currently in place require that each applicant establish water and sewer rates that are sufficient to operate and maintain its water and sewer system. Regulations also require responsive, timely action to protect water quality regardless of the availability of grants and/or loans. Waiting to obtain sufficient grant funding is not a satisfactory strategy. Loan programs are already in place and funds are available to address situations where local reserve funds are insufficient to fund capital improvements. Finally, some funding agency criteria require a minimum local share or match in order to qualify for a grant. The multiple attempts at requirements and incentives for local units of government to establish and provide for a sustainable utility system are evident, yet many local governments delay improvements until optimum grant funding can be secured.

The series of situations and/or inactions outlined above can result in water and sewer systems not being self supporting and sustainable. The statutory intent is in place. Funding priority criteria are in place. System sustainability appears to be a matter of local choice and unless actions are monitored, audited and certified as being in compliance as a part of the funding process, system

Working Group #2: Infrastructure Funding Priorities

sustainability will languish. Therefore legislative action addressing system sustainability may be in order. Such legislative action should address the matter of auditing applicants to (1) determine if, in fact, water and sewer rates are sufficient to sustain the operating budget rather than being subsidized by the general fund; (2) budgets include provision for contribution to a capital reserve and that a reserve does, in fact, exist; and (3) grant funding criteria be modified to reward those applicants whose grant match is indeed a local share as opposed to another grant.

Note 1: Funding criteria already require that water and sewer rates be established sufficient to fund water and sewer operations. Debt service, which can be a significant part of the annual utility budget, can be funded through the general fund (the assessment of *ad valorem* taxes). The utility operating budget should include debt service as well as O&M expenses. Regardless, there is currently no provision to monitor local government utility budgeting practices relating to water and sewer operations and to audit same to determine if the criteria for having received state loan and/or grant funding are being met.

Note 2: Funding criteria require the establishment of a water and sewer utility reserve fund. There is currently no provision to monitor local government utility budgeting practices relating to water and sewer operations and to audit same to determine if the criteria for having received state loan and/or grant funding are being met.

Note 3: At least one funding agency currently implements a priority points system to reward local governments that are actually funding the local share from reserves as opposed to using another grant fund as the local match. Other funding agencies have the flexibility to implement such a priority rating system and are encouraged to do so.

Note 4: The LGC tracks financial results and key ratios for water and sewer enterprises. This information shows or suggests which water systems are operating at a loss, which systems do not have an operating reserve, and which systems undervalue and underprice water services. Given that it is difficult for local elected officials to raise water and wastewater rates on their residential, commercial, institutional, and industrial customers, the LGC should be more active in identifying and challenging the systems that are not adequately investing in their water infrastructure. LGC analysis compares systems to each other and to statistical measures of central tendency and variance, but there is no statement in current LGC reporting of absolute benchmarks that should be met but are not being met. There is no separate scheduling, reporting on, or notification of systems that consistently fail to cover operational and capital needs.

Working Group #2: Infrastructure Funding Priorities

Water Database:

Recommendation:

- Enact legislation to create a statewide water and wastewater infrastructure funding database for North Carolina to be administered by the Division of Water Resources (DWR) in the NC Department of Environment and Natural Resources (NC DENR).

Commentary:

Currently there is no one source of information to track and locate all of the current water and wastewater infrastructure project needs and funding patterns in this state. Federal and state agencies (e.g. EPA), funding groups and non-profits spend a lot of money and resources trying to determine what the water infrastructure needs are in North Carolina.

Other states such as Kentucky and Georgia have state maintained water infrastructure databases that compile:

- current and proposed infrastructure projects
- system information (interconnections, fiscal)
- strategic plans
- water resource maps and publications
- systems management information
- reporting and regulatory requirements
- guidance and training documents
- procedural guidance and forms for project implementation and funding
- internet links to support services

The first step for North Carolina would likely be data consolidation. There is a wealth of information that is currently collected, but not integrated. For instance, every 3 years NC DENR surveys the state's large utilities on the status of its current and future projects, but that data is never compiled electronically. The Division of Water Resources produces the Local Water Supply Plan, but it has never considered what the current needs are. The various funding agencies have been working on common application forms and criteria, but the information on those applications are not currently compiled and integrated electronically. All of these are examples of existing data that could be pulled together as the foundation for a unified database.

Working Group #2: Infrastructure Funding Priorities

Note 1: The database would collect both existing and future projects, assigning each a unique ID, and the project could change in status when it receives funding. In order to receive state funding, all utilities would need to apply through this database. This would lead to instant credibility and transparency in the funding process and would hopefully eliminate some of the duplication and “gaming the system” that currently takes place.

Note 2: As the agency in charge of administering the database, DWR would need at least one FTE to administer and update the database. DWR could also form working groups to address any issues it ran into such as what qualifies as a “project” for database purposes and ensuring that jurisdictions of all size identify future project needs.

Note 3: This sort of unified database of both existing projects and future needs would be of significant benefit to both utilities and funders. Local government system operators and directors would have a “one stop shop” to locate all the technical information and funding patterns in North Carolina.

Working Group #3: Financing the Current Critical Gaps

Report from:
Water/Wastewater Infrastructure Study Commission
Working Group #3: Financing the Current Critical Gaps
April 22, 2010

The Water/Wastewater Infrastructure Study Commission Working Group #3: Financing the Current Critical Gaps was charged with reviewing available information and recommending infrastructure funding priorities to ensure that funds are used to meet the State's most pressing needs, especially those needs facing communities with severe financial constraints and those needs that do not easily fall within the top priorities for federally-assisted programs. The Group was led by Representative Jim Crawford and Senator A.B. Swindell with Billy Ray Hall and Dale Carroll serving as members.

The Group reports the following critical needs for FY 2010-11:

1. The Clean Water Management Trust Fund reported critical needs of \$44 million.
2. The Rural Economic Development Center reported critical needs of \$47-55 million.
3. The Department of Environment and Natural Resources did not have a specific number but commented that they would need match money for the State Revolving Funds on the order of \$15-17 million.

It should be noted that the figures presented may have some overlap of projects, but it can be reasonably assumed that the current critical needs are close to \$100 million.

Summary of Group Meetings

The Group met on March 10, 2010 and again on April 1, 2010. At the March 10 meeting the group reviewed data on current and historical water and wastewater funding levels. The group also received information on the structure of current grant and loan programs in State government for water and wastewater projects. There was a group discussion related to determining what the critical needs are and where the gap is. There was some discussion that grant money is needed for those communities that have the highest costs with the fewest resources. It was agreed that representatives from the Rural Center, the Department of Environment and Natural Resources, and the Clean Water Management Trust Fund would meet separately to discuss defining the critical needs and coming up with needed funding amounts.

On April 1, 2010 the working group met again to hear from the agencies on their critical needs. The Rural Center presented a handout defining and detailing the rural critical funding gap. It defined "current critical need" as projects which promote public health and/or protect the environment and are not more than 24 months old. The Rural Center then used the ARRA SRF applications as a proxy for arriving at how much unfunded need there is in rural areas. The total amount of unfunded rural projects from the ARRA SRF funding was \$553 million, with another \$75 million anticipated to be funded in FY

Working Group #3: Financing the Current Critical Gaps

2010-11, leaving a balance of \$478 million. Using past experience, the Rural Center anticipates that 10% of those projects will be crisis needs – or about \$47 to \$55 million. There was some discussion that the ARRA projects had a funding cap of \$3 million, which limited who applied. Additionally, the projects that had the greatest crisis or critical needs are the ones that were funded with ARRA funds, so the remaining unfunded projects may not be as critical. There was also discussion of the general rule-of-thumb that for every \$1 million funded for water/wastewater projects, 35 jobs are generated.

Clean Water Management Trust Fund (CWMTF) stated that they had \$97.4 million requested in the 2010 round for wastewater projects. All of these projects had to meet the ability-to-pay criteria. CWMTF stated that about \$44 million in projects were high priority critical needs projects. DENR indicated that they had not come up with a number as to how much funding it needed for critical needs, but it was mentioned that DENR will need State Revolving Fund match money, estimated to be \$14-17 million.

The group then had a discussion about what the funding gap is, with some discussion about communities paying a fair price for water and the State or federal government picking up the rest. Others mentioned that the funding gap should be the difference between what the State currently pays for and what the State *should* pay for, which is not necessarily the total universe of funding needs. There was further discussion that the price of treating and obtaining water varies widely across the State, so the price of water will never be “equal” across the State. The group spoke of the need for regionalism and efficiency and that everyone needs to be held to a set of standards regarding asset management.

Working Group #4: Long-term State assistance and financing

Please note that the items identified by Working Group #4 represent possible revenue options that the working group identified that should be explored by the Commission. The inclusion of the options in this report does not indicate any recommendation or endorsement by any of the working group members.

County Land Transfer Act: (G.S. Art. 60, Sec. 105-600; S.L. 2007-323)

Background: A county is allowed, through a majority vote on a referendum, to levy a local land transfer tax on instruments conveying interests in real property located in the county. Certain types of land transfers are exempt from the levy. The County Land Transfer Act does not apply to transfers of an interest in real property by: a governmental unit or instrumentality of a governmental unit; operation of law; lease for a term of years; or pursuant to the provisions of a will; intestacy; gift; if no consideration in property or money is due or paid by the transferee to the transferor; merger, conversion, or consolidation; by an instrument securing indebtedness. (G.S. 105-228.28 and G.S. 105-228.29). The tax increase is limited to increments of 0.1%, with a maximum rate of 0.4%.

A corresponding state tax does exist. G.S. 105-228.30 requires the Excise Tax on Conveyances, subject to the same exemptions, at a rate of \$1.00 for every \$500 of the value of interest conveyed. Of the funds collected, 50% are credited to the county's general fund. Of the remaining 50%, 25% are credited to the Natural Heritage Trust Fund and 75% are credited to the Parks and Recreation Trust Fund. A county may keep up to 2% of the funds collected that are to be remitted to the state to compensate for the administration of the tax.

Currently, no counties have passed the County Land Transfer Tax. In total, the issue has been put before county voters twenty-three times. Seven counties have local land transfer taxes authorized by the General Assembly, separate from S.L. 2007-323, at the rate of one percent per value of interest conveyed. These counties are Dare, Currituck, Chowan, Camden, Pasquotank, Perquimans, and Washington.

Proposal: The state would withdraw the authority granted to the counties to impose, and/or increase the County Land Transfer Tax under G.S. Art. 60, Sec. 105-600. The state would then impose an additional Excise Tax on Conveyances in the amount of the authority rescinded from the counties.

Expected Revenue: For each additional 0.1% incremental increase, revenues would increase by \$36 million statewide. An increase to the maximum rate in statute increases revenues to \$144 million.

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Off Shore Energy Exploration and Production of Energy

Background: On December 20, 2006 the Gulf of Mexico Energy Security Act of 2006 (P.L. 109-432) was signed into law. This Act established a revenue sharing agreement between the states of Alabama, Louisiana, Mississippi, and Texas (Gulf Producing States) and the Federal government. The Gulf Producing States are paid through a formula primarily based on the distance from a state to the producing well. From 2007 to 2016, 50% of royalties are distributed to the US Treasury; 12.5% of royalties are distributed to the Land and Water Conservation Trust Fund; 30% of royalties are distributed to the Gulf Producing States; and 7.5% of royalties are distributed to the Gulf Producing States Coastal Political Subdivisions.¹

The Outer Continental Shelf Lands Act (OCSLA) of 1953 is the controlling legislation for off shore energy exploration and production. According to OCSLA, the Federal government retains control of all submerged lands that are three miles or more offshore. For lands generating receipts within a three mile boundary, the Federal government is required to distribute all royalties to the affected state. For lands generating receipts within a three to six mile area from a state's shore, twenty-seven percent of all receipts generated in that area.²

The U.S. Department of the Interior's Mineral's Management (MMS) Service publishes the five-year Outer Continental Shelf Oil and Gas Leasing program, as required under Section 18 of the OCSLA. Within the 2002-2007 plan, no lands in the adjacent to North Carolina were scheduled for development. Lands off the coast of Virginia are in the 2007-2012 five year plan, at the request of the Commonwealth of Virginia. These lands represent the only lands in the Mid-Atlantic Program Area. Areas off the North Carolina coast are available for study, exploration, and potential development.

State Action: In order for the State of North Carolina to obtain a portion of revenues from energy exploration and production, they would need to enter into an agreement with the Federal government, as the Gulf Producing States have done. Such an agreement would require federal legislation. According to conversations with officials at the MMS, official state actions requesting inclusion in the five-year plan, are helpful, but not required.

Other State Actions in Study Area: Currently, Virginia has passed House Bill 756 in 2010. Under this bill, "70 percent of all revenues and royalties paid to the Commonwealth for offshore natural gas and oil drilling shall be deposited in the Transportation Trust Fund, 20 percent of revenues are to be appropriated to the Virginia Coastal Research Consortium and 10 percent of revenues are to be appropriated to the

¹ United States Code: 48 USC 1331

² United States Department of the Interior (No Date). Leasing Oil and Gas Resources: Outer Continental Shelf. Washington, DC: <http://www.ncleg.net/documentsites/committees/OEESC/MMS-Leasing%20Guidebook/GreenBook-LeasingDocument.pdf>.

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localities of the Commonwealth for improvements to infrastructure and transportation.”³ Currently, in South Carolina, there are four bills being considered in the House and Senate pertaining to offshore oil and gas exploration receipts. Under H3194, ninety percent of all state revenues would be placed in the Transportation Trust Fund, and ten percent would be allocated to the Department of Natural Resources.⁴

Expected Revenue: The Virginia Department of Planning and Budget prepared a 2010 Fiscal Impact Statement analyzing the potential impacts of offshore energy development. Their analysis is helpful for North Carolina. Estimating revenues from prospective oil and gas development is extremely uncertain. For North Carolina to receive revenue from oil and gas exploration:

1. The Congress would have to grant revenue sharing authority under the Outer Continental Shelf Land Act. Authority has only been granted to the Gulf of Mexico States and Alaska.
2. Lease development would need to be included in the 2007-2012 offshore oil and gas leasing plan. No offshore land adjacent to North Carolina is in the 2007-2012 draft plan
3. Required environmental impact assessments, and a public comment period, would need to occur prior to any lease sale.
4. Companies would have to respond to with interest to offering of a lease.
5. Factors related to the production of energy, such as the amount of oil and gas, the worth of such deposits, and revenue sharing with other states would also affect any potential revenue flowing to North Carolina.

Virginia estimated that \$37.7 to \$56.5 million a year could flow to the state over a 20 to 30 year time period, if the state received a revenue sharing agreement similar to the Gulf Producing States. Virginia estimated the price of oil at \$90 per barrel and the price of natural gas at \$9.50 per thousand cubic feet.

Projected State Revenues (NC): Due to the above uncertainties regarding oil and gas leasing, such an issue would require further study before issuing a revenue projection for North Carolina.

Potential State Actions: Ultimately, the issue regarding off-shore energy exploration and development is Federal in nature. However, the General Assembly could consider the following: passing legislation allocating potential royalties; passing legislation supporting offshore energy exploration.

³ Virginia Department of Planning and Budget (Feb. 2010) 2010 Fiscal Impact Statement: HB756. Richmond, VA: <http://leg1.state.va.us/cgi-bin/legp504.exe?101+oth+HB756FER122+PDF>

⁴ SC General Assembly, 2009-2010 Session: S44, H3194, H3188, H3147

Working Group #4: Long-term State assistance and financing

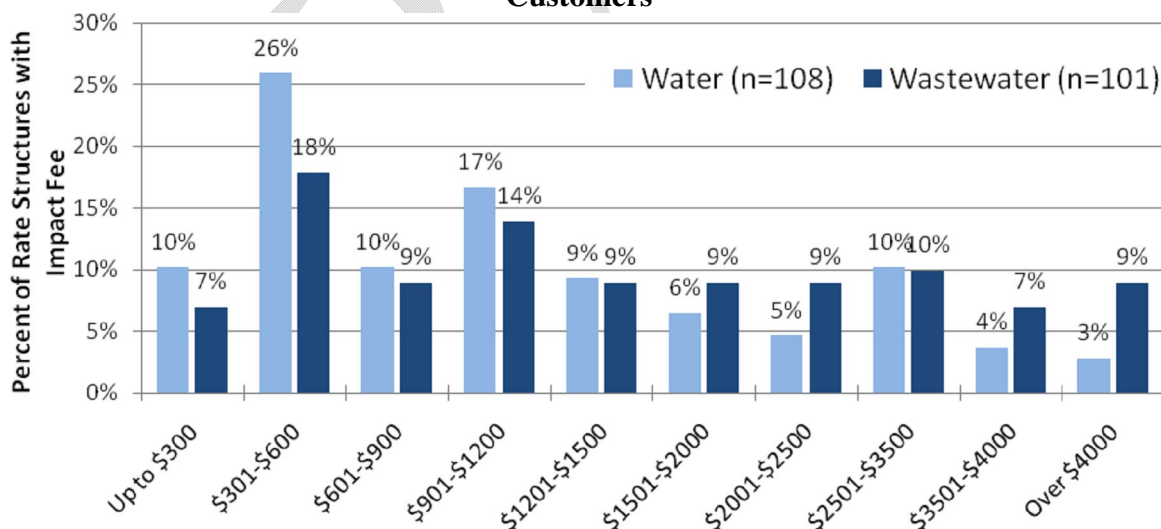
Local Contribution to State Related Water and Sewer Grants

Background: Water and waste water providers typically charge an impact fee to help cover the incremental cost of additional customers on the system. These charges can also be called system development charges or fees. In North Carolina are known as special assessments, such assessments are governed by GS 160A-216, GS 153A-185, 162A-6(a)(14a), and 130A-55(22) for cities and towns, counties, water and sewer authorities, and sanitary districts respectively. System development charges are typically assessed in multiple ways. Typically, these fees are assessed in the following ways:

- *Flat Fee:* Every meter pays a flat fee, regardless of the type of user.
- *User Type:* Residential, Commercial, Industrial, and Agricultural users would each pay a different fee.
- *Water Usage:* The fee would vary by the amount of water usage
- *Tap Size:* The fee would vary by tap size.
- *Land or Unit Size:* Such a fee could vary on the size of the land or building unit being serviced.

Fee Amount: Many water and sewer providers in North Carolina currently have special assessment. For North Carolina, the median assessment, as of January 2009 was \$1,000 for residential water customers and \$1,283 for residential sewer customers. Please refer to the figure and table below for additional information.

Figure 1: North Carolina Impact Fees as of January 2009 for Residential Customers⁵



⁵ Eskaf, S and Nida, C. (2009) Tap Fees and System Development Charges for Residential Water and Wastewater Connections in North Carolina as of January 2009. *University of North Carolina Environmental Finance Center*. http://www.efc.unc.edu/publications/pdfs/NCTapFeesandSDC_Memo2009.pdf

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Table 1: Median Residential System Development Charges

	Water (n = 108 rate structures)	Wastewater (n = 101 rate structures)
Inside	\$1,000	\$1,283
Outside Jurisdiction	\$1,075	\$1,310

Fees vs. Taxes: A fee is charged for a charge imposed for the use of property, the provision of a service, or the regulation or protection of an item or an activity. A tax is imposed equally on everyone in the same class to provide revenue for the support of government in general.

Clean Water Management Trust Fund: The Clean Water Management Trust Fund funded four projects that involved new connections in 2008. These projects established 73,935 linear square feet of sewer line and connected 285 additional residences. Using the median figures above, this could generate an amount to \$365,655 in funding to the State.

NC Rural Center: The Rural Center reported that two programs connected additional residences to water and wastewater infrastructure. Of two programs that the Rural Center runs, Clean Water Partners' Infrastructure Program and Economic Infrastructure Program, resulted in 1888 new connections. Using median water assessments, this would result in \$1,888,000 to the State.

NC DENR: No longer funds line extensions.

Potential Drawbacks:

- Current General Statutes limit the use of special assessments to needs of the facility or locality assessing the charge (GS 130A-55(22); GS 153A-185; 160A-216; 162A-6(14a.) Uses of such funds are broadly defined in statute and limit the city, county, district, or authority, but ultimately must be used for the water and sewer system.
- An entity may not charge a system development charge. If it does not, would it be able to receive funds from the program?
- There is concern that removal of the assessment from the local entity assessing it may make such an assessment a tax.
- Special Assessments ideally are used to fund the capital needs of the system in the future, which include much more than new lines.

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Virginia Resources Authority

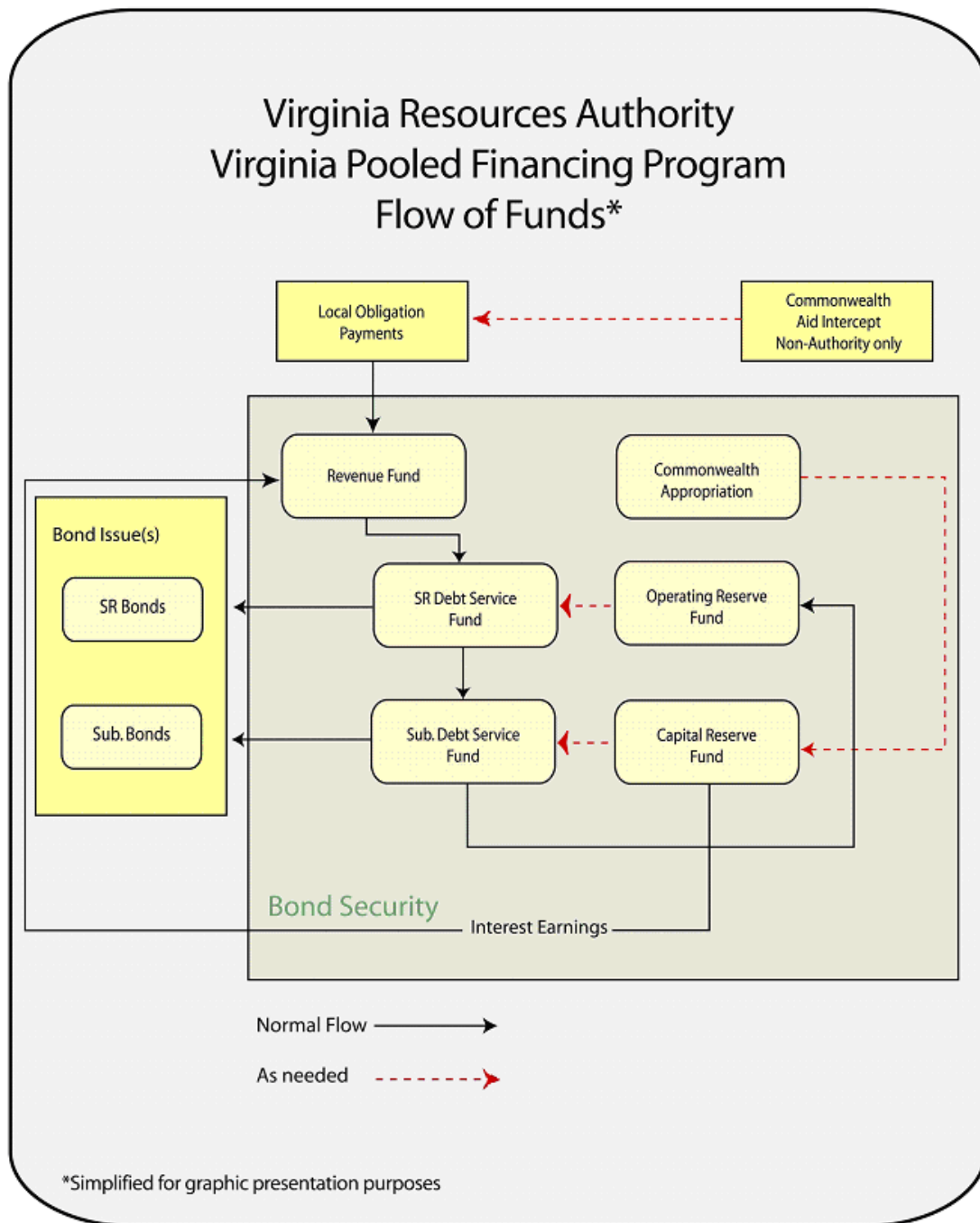
Background: The Virginia Resources Authority is a self financed state entity and was created in 1984 under Chapter 21, Title 62.1 of the Code of Virginia and houses a number of programs: Virginia Pooled Financing Program, Virginia Water Facilities Revolving Fund, Virginia Water Supply Revolving Fund Loan, Virginia Dam Safety and Flood Prevention Fund, and the Virginia Airports Revolving Fund. A number of funds are co-administered with other state agencies, with the Virginia Resources Authority providing financial management and various other agencies providing the regulatory and programmatic management.⁶

Of interest to the Committee is the Virginia Pooled Financing Program (VPFP). Essentially, this entity is a municipal bond bank. Essentially, such banks consolidate local government bond issues into a single pooled issue. This program provides communities in Virginia with access to credit markets. Currently, Virginia's program carries ratings of AAA for senior bonds. This enables the program to offer lower interest rates for projects that would otherwise be asked to pay a higher interest rate or would lack access to the debt markets. Projects that are typically funded from such offerings include: facilities related to water supply, wastewater treatment, solid waste management, recycling, resource recovery, energy conservation and efficiency, public safety, and local government buildings, as well as interests in land related thereto. From FY 2004-2008, the VPFP provided approximately \$718 million in funding for 57 local governments and regional authorities.⁷ The Program accepts applications from local entities for access to VPFP bond proceeds, to be paid back from the local and regional authority. The applications are evaluated on a number of factors, but primarily on the economic feasibility of the project. Bonds are issued at least twice per year. The chart below shows the flow of funds from the VRA to local projects.⁸

⁶ Virginia Resources Authority (FY 2008). Annual Report: 2008. Richmond, VA.
<http://www.virginiareources.org/pdf/VRA%20Annual%20Report%20and%20CAFR%20FY08.pdf>

⁷ Virginia Resources Authority (Sept. 2009). Comprehensive Annual Financial Report for the Virginia Resources Authority. Richmond, VA.
<http://www.virginiareources.org/pdf/FINAL%20CAFR%202009.pdf>

⁸ Fidelity Investments (No date). Virginia Resources Authority: Virginia Pooled Financing Program. Boston, MA. <https://www.fidelitycapitalmarkets.com/newsdocs/VRA.pdf>.



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Potential Drawbacks:

- According the to the 2010 Debt Affordability Study by the Debt Affordability Advisory Committee, the State currently has extremely limited available debt if needed to back a such an authority.
- Some local governments may not take advantage of the authority because they can already access debt markets.⁹
- Some argue that such banks can overly interfere with local government finances.
- Some appropriations may be required to facilitate the program, and provide as needed funding.

Water and Sewer Utility Tax

Background: Currently, there is no customer level tax on water and sewer usage in the state. G.S. 105-116 currently applies the Franchise or Privilege Tax on Electric Power, Water, and Sewerage Companies. The tax rate on a water company is 4% and on a sewer company is 6%. However, the Franchise and Privilege Tax would not apply to public entity (for example, Orange County Water and Sewer Authority). However, there is a model for applying this tax to a utility. GS 105-164.4(a) applies a rate of 3% to gross receipts derived from the sales of electricity.

Potential Revenue: Using the US Environmental Protection Agency's Safe Drinking Water Database, there were 2,870,765 accounts in North Carolina, being served by 2,128 community water systems. This represents a total population of 7,331,753 as being served by a community system.¹⁰ Using data collected by the UNC Environmental Finance Center and NC League of Municipalities, the median water bill for residents was \$27.15 per month (assumes 6,000 gsf usage).¹¹ This would represent a \$9.72 per customer tax with a total amount of \$28,085,856 generated per year. Reliable data on wastewater systems residential connections was not available. However, the UNC Environmental Finance Center and NC League of Municipalities found that median sewer bill for residents was \$32.99 per month. This equates to \$11.88 per customer tax.

⁹ Council of Development Finance Agencies (No Date). State Bond Banks: Municipal Borrowing Made Easy. <http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/statebondbanksanderson.html>.

¹⁰ United States Environmental Protection Agency (2009). Safe Water Drinking System/State Version. Washington, DC. http://www.epa.gov/ogwdw000/sdwis_st/current.html.

¹¹ Nida, K and Eskaf, S. (March 2009) Water and Wastewater Rates and Structures in North Carolina. North Carolina League of Municipalities and the University of North Carolina Environmental Finance Center. Raleigh and Chapel Hill, NC: http://www.efc.unc.edu/publications/pdfs/NCLM_EFC_AnnualW&WWRatesReport-2009.pdf.

Working Group #4: Long-term State assistance and financing

Other State Example: Maryland: “State Flush Tax.”¹²

In 2004, Senate Bill 320, The Bay Restoration Fund, was signed into law in the State of Maryland. According to the State of Maryland’s Department of Environment, wastewater treatment plants are one of the top three contributors of nutrients into the Chesapeake Bay. The Bill created a dedicated fund to upgrade wastewater treatment plants to achieve wastewater effluent treatment standards.

The Wastewater Treatment Plants Fund receives revenue from the following sources:

- \$2.50 monthly fee collected from each home served by a wastewater treatment plant.
- \$2.50 monthly fee per Equivalent Dwelling Unit (EDU) from each commercial and industrial users served by a wastewater treatment plant.

The Department then issues bonds backed by this revenue stream to upgrade wastewater treatment facilities. Certain facilities that discharge into the Bay have priority for funds.

The Onsite Disposal Systems Fund receives revenue from a \$30 annual fee from each residence served by an onsite (septic tank) system. The funds are used for to cover septic system upgrades (60% of funds) and cover crops (40% of funds). Cover crops are crops planted after the fall harvest that help reduce unused fertilizers. Priority is given to failing septic systems in certain areas.

¹² Maryland Department of Environment (No Date). Bay Restoration Fund (Senate Bill 320). <http://www.mde.state.md.us/water/CBWRF/index.asp>.

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RECOMMENDATIONS FOR FURTHER STUDY

Items for Further Study: Upon hearing recommendations from the various Working Groups and Commission Members, the Commission recommends the following items for further discussion and study:

- *Polices to Enhance Local System Maintenance:* The Commission recommends further study on methods to enhance local water and wastewater system sustainability. Such study should include, but not be limited to, the following:
 - *Enhanced Reporting:* Require local systems to submit annual audit statements and fee operating coverage ratios to the various State funding agencies.
 - *Capital Reserve Fund:* Require local water and wastewater systems to establish and maintain a capital reserve fund.
 - *Disclosure of Local Match:* Require local water and wastewater systems to disclose the source of the local match for State grants to the various funding agencies; and, disallow the use of other State grants to be used as the local match.
 - *Fiscal Benchmarks:* Develop fiscal benchmarks to be set in Statute in order to guide State water and wastewater infrastructure investment decisions.
- *Financing Options:* The Commission recommends further study on methods to finance local water and wastewater infrastructure projects by the following means:
 - *Local Infrastructure Bank:* Establish an infrastructure bank within the state to improve local access to capital markets. As a model, the State should consider the Virginia Resources Authority's Virginia Pooled Financing Program.
 - *Establish a Water and Wastewater Utility Tax:* Establish a local water and wastewater tax. As a model, the State should consider the gross receipts from the sale of electricity (GS 105-164.4(a)).
 - *Establish a State Flush Tax:* Establish a "State Flush Tax" based on the State of Maryland's Bay Restoration Fund (2004 Regular Session, Senate Bill 320).
- *Failing Water and Wastewater Systems:* The Commission recommends further study on methods to address failing private and not-for-profit water and wastewater systems. Such study should include, but not be limited to:
 - *Existing programs:* Evaluation of existing programs to address failing systems, including the following:
 - The Disadvantaged Communities Program managed by the Public Water Supply Section of the Division of Environmental Health of DENR.
 - Funding by the Rural Center for the extension of service to a disadvantaged community.

- The establishment of acquisition incentive accounts by private water and sewer companies regulated by the North Carolina Utilities Commission for the acquisition and upgrade of nonviable water and sewer systems in the State.
 - *Incentivize assimilation:* Encourage, through incentives and other means, the consolidation of failing systems into financially healthy neighboring systems.
- *Agriculture Cost Sharing:* The Commission recommends further study on creating an agriculture cost sharing program for agricultural users water and wastewater projects. Such a program could be run through the Department of Environment and Natural Resources or Department of Agriculture and Consumer Services. The purpose of the program would be to provide matching grant funds to agricultural water users to develop and implement efficient water resource practices and improve agriculturally impaired water sources.
- *Contingency Fund:* The Commission recommends further study on whether to establish a contingency fund for emergency projects to address failing water/wastewater systems and the amount of funds that should be placed in the contingency fund.
- *Reservoir construction:* The Commission recommends further study on whether to amend the common criteria to allow funds to be utilized towards the construction of water supply reservoirs as an eligible project activity or cost, where allowed under federal law.

LEGISLATIVE PROPOSALS

2009-SYz-13. Modify Water Funding Priorities.

Sources:

- Working Group #1: Move toward requiring water/wastewater systems to base estimated infrastructure needs on an asset management plan.
- Working Group #2: Establish regionalization as a common criterion, with “where practicable” language based on comments at April 22, 2010 meeting of Commission.
- Working Group #2: Establish ascending High Unit Cost (HUC) Criteria above the current threshold of 1.5% of the Median Household Income.
- Working Group #2: Establishes drought management as a common criterion.
- Rural Center comments: Make leaking line repairs a priority.

2009-SYz-14. Local Government Commission Evaluate Water Systems.

Source:

- Working Group 32: Authorizes DENR and the Local Government Commission to study the value of increasing their role in the review and oversight of the financial operations of water and wastewater systems.

2009-SYz-15. Water Supply System Capacity Planning.

Source:

- Rural Center comments: Authorize Commission to establish a requirement for water systems to initiate planning for an expanded water supply when the average daily demand reaches 80% of capacity (currently a guideline for water and a requirement for sewer).

2009-LHz-272. Clean Water Management Trust Fund.

Source:

- Working Group #3: Clean Water Management Trust Fund critical needs appropriation.

2009-LHz-273. DENR matching funds.

Source:

- Working Group #3: Appropriates funds to DENR to provide State match for federal revolving funds.

2009-LHz-274. Rural Center Funds.

Source:

- Working Group #3: Rural Center critical needs appropriation. The amount of the appropriation and the draft language revised pursuant to correspondence with Rural Center.

2009-LHz-275. Water Infrastructure/Close Info Gaps.

Source:

- Working Group #1: Build on the base of the existing EPA water/wastewater infrastructure survey process. Supplement the federal survey with a state-only survey to gather additional information on economic development and growth related infrastructure needs; water system efficiency measures; and costs related to development of new water sources.
- Working Group #1: Use the surveys as the basis for an updated report to the General Assembly every 4 years on combined water/wastewater infrastructure needs.
- Working Group #1: Incorporate water infrastructure needs into local water supply plans (updated every 5 yrs).

2009-LHz-276. Survey Ag Water Infrastructure Needs.

Source:

- Working Group #1: Agricultural agencies and organizations should continue to work with farmers to identify agricultural water infrastructure needs that are not accounted for in the survey of public water/wastewater infrastructure needs and report those needs to the General Assembly every 5 years.

2009-LHz-279. Conserve & Protect Ag Water Resources.

Source:

- Addresses recommendation made by Rep. Tarleton at the April 22, 2010 Commission meeting.

2009-LHz-281. Water infrastructure database/Task Force.

Source:

- Working Group #2: Enact legislation to create a statewide water and wastewater infrastructure funding database for NC.

**GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2009-SYz-13 [v.5] (04/22)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 4:52:14 PM**

Short Title: Water Funding Priorities.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE COMMON CRITERIA APPLICABLE TO LOANS
AND GRANTS FOR WATER AND WASTEWATER INFRASTRUCTURE
PROJECTS TO: (1) CLARIFY THAT LEAKING WATERLINES ARE A
PRIORITY FOR BOTH WATER QUALITY AND WATER QUANTITY
PURPOSES; (2) INCLUDE ASSET MANAGEMENT PLANNING,
REGIONALIZATION, STATE WATER SUPPLY PLANNING, AND
DROUGHT MANAGEMENT IN THE LIST OF COMMON CRITERIA
THAT RECEIVE PRIORITY FOR FUNDING; (3) ESTABLISH A SLIDING
SCALE SYSTEM FOR DETERMINING THE PRIORITY GIVEN TO
PROJECTS THAT EXCEED THE HIGH-UNIT-COST THRESHOLD; AND
(4) PROVIDE THAT A PROJECT THAT DEMONSTRATES IT IS NOT
PRACTICABLE FOR THE PROJECT TO PURSUE REGIONALIZATION
BASED ON TOPOGRAPHY OR OTHER FACTORS SHALL BE GIVEN
THE SAME PRIORITY FOR REGIONALIZATION AS A PROJECT THAT
INCLUDES REGIONALIZATION, AS RECOMMENDED BY THE
LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER
INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159G-20 is amended by adding a new subsection to
read:

"(28) Asset management plan. – The strategic and systematic
application of management practices applied to the infrastructure
assets of a local government unit in order to minimize the total
costs of acquiring, operating, maintaining, improving and
replacing the assets while at the same time maximizing the
efficiency, reliability, and value of the assets."

SECTION 2. G.S. 159G-23 reads as rewritten:

1 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or**
2 **Drinking Water Reserve.**

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

- 7 (1) Public necessity. – An applicant must explain how the project
8 promotes public health and protects the environment. A project
9 that improves a system that is not in compliance with permit
10 requirements or is under orders from the Department, enables a
11 moratorium to be lifted, or replaces failing septic tanks with a
12 wastewater collection system has priority.
- 13 (2) Effect on impaired waters. – A project that improves designated
14 impaired waters of the State has priority.
- 15 (3) Efficiency. – A project that achieves efficiencies in meeting the
16 State's water infrastructure needs or reduces vulnerability to
17 drought consistent with Part 2A of Article 21 and Article 38 of
18 Chapter 143 of the General Statutes by one of the following
19 methods has priority:
- 20 a. The combination of two or more wastewater or public
21 water systems into a regional wastewater or public water
22 system by merger, consolidation, or another means.
- 23 b. Conservation or reuse of water, including bulk water reuse
24 facilities and waterlines to supply reuse water for
25 irrigation and other approved uses.
- 26 c. Construction of an interconnection between water systems
27 intended for use in drought or other water shortage
28 emergency.
- 29 d. Repair or replacement of leaking ~~waterlines~~ waterlines to
30 prevent contamination and to improve water conservation
31 and efficiency.
- 32 e. Replacement of meters and installation of new metering
33 systems.
- 34 (4) Comprehensive land-use plan. – A project that is located in a city
35 or county that has adopted or has taken significant steps to adopt
36 a comprehensive land-use plan under Article 18 of Chapter 153A
37 of the General Statutes or Article 19 of Chapter 160A of the
38 General Statutes has priority over a project located in a city or
39 county that has not adopted a plan or has not taken steps to do so.
40 The existence of a plan has more priority than steps taken to
41 adopt a plan, such as adoption of a zoning ordinance. A plan that
42 exceeds the minimum State standards for protection of water
43 resources has more priority than one that does not. A project is

1 considered to be located in a city or county if it is located in
2 whole or in part in that unit. A land-use plan is not considered a
3 comprehensive land-use plan unless it has provisions that protect
4 existing water uses and ensure compliance with water quality
5 standards and classifications in all waters of the State affected by
6 the plan.

7 (5) Flood hazard ordinance. – A project that is located in a city or
8 county that has adopted a flood hazard prevention ordinance
9 under G.S. 143-215.54A has priority over a project located in a
10 city or county that has not adopted an ordinance. A plan that
11 exceeds the minimum standards under G.S. 143-215.54A for a
12 flood hazard prevention ordinance has more priority than one that
13 does not. A project is considered to be located in a city or county
14 if it is located in whole or in part in that unit. If no part of the
15 service area of a project is located within the 100-year floodplain,
16 the project has the same priority under this subdivision as if it
17 were located in a city or county that has adopted a flood hazard
18 prevention ordinance. The most recent maps prepared pursuant to
19 the National Flood Insurance Program or approved by the
20 Department determine whether an area is within the 100-year
21 floodplain.

22 (6) Sound management. – A project submitted by a local government
23 unit that has demonstrated a willingness and ability to meet its
24 responsibilities through sound fiscal policies and efficient
25 operation and management has priority.

26 (6a) Asset management plan. – A project submitted by a local
27 government unit that has developed and is implementing an asset
28 management plan has priority over a project submitted by a local
29 government unit that has not developed or is not implementing
30 an asset management plan.

31 (7) Capital improvement plan. – A project that implements the
32 applicant's capital improvement plan for the wastewater system
33 or public water system it manages has priority over a project that
34 does not implement a capital improvement plan. To receive
35 priority, a capital improvement plan must set out the applicant's
36 expected water infrastructure needs for at least 10 years.

37 (8) Coastal habitat protection. – A project that implements a
38 recommendation of a Coastal Habitat Protection Plan adopted by
39 the Environmental Management Commission, the Coastal
40 Resources Commission, and the Marine Fisheries Commission
41 pursuant to G.S. 143B-279.8 has priority over other projects that
42 affect counties subject to that Plan.

- 1 (9) High-unit-cost threshold. – A high-unit-cost project has priority
2 over projects that are not high-unit-cost projects. The priority
3 given to a high-unit-cost-project shall be set using a sliding scale
4 based on the amount by which the applicant exceeds the
5 high-unit-cost threshold.
- 6 (10) Regionalization. – A project to provide for the planning of
7 regional public water and wastewater systems, to provide for the
8 orderly coordination of local actions relating to public water and
9 wastewater systems, or to help realize economies of scale in
10 regional public water and wastewater systems through
11 consolidation, merger, or interconnection of public water and
12 wastewater systems has priority. A project that demonstrates it is
13 not practicable for the project to pursue regionalization based on
14 topography or other factors shall be given the same priority for
15 regionalization as a project that includes regionalization.
- 16 (11) State water supply plan. – A project that addresses potential
17 conflicts between local plans or implements measures in which
18 the local water supply plans could be better coordinated, as
19 identified in the State water supply plan pursuant to
20 G.S. 143-355(m), has priority.
- 21 (12) Water conservation measures for drought. – A project that
22 includes adoption of water conservation measures by a local
23 government unit that are more stringent than the minimum water
24 conservation measures required pursuant to G.S. 143-355.2 has
25 priority."

26 **SECTION 3.** This act is effective when it becomes law.
27

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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BILL DRAFT 2009-SYz-14 [v.2] (04/22)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/5/2010 5:41:09 PM**

Short Title: Local Government Comm. Review Water Systems.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES AND THE LOCAL GOVERNMENT
COMMISSION OF THE OFFICE OF THE STATE TREASURER TO
EVALUATE THE POTENTIAL BENEFITS OF MONITORING THE
FINANCIAL CONDITION OF PUBLIC WATER SUPPLY AND
WASTEWATER SYSTEMS, AS RECOMMENDED BY THE
LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER
INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Environment and Natural Resources and the Local Government Commission in the Office of State Treasurer shall evaluate the costs and benefits of conducting financial reviews of public water supply and wastewater systems to ensure that public water supply or wastewater systems raise revenue sufficient to cover the costs associated with the system, including the costs of maintenance, repair, and replacement of treatment and distribution or collection infrastructure. The Department and the Commission shall evaluate the desirability of requiring the following actions by public water supply and wastewater systems:

- (1) Submission of annual audit statements by local governments to State funding agencies for the purpose of reporting on system operations and to demonstrate whether the water and sewer rates of each system are sufficient to maintain system operations and meet debt service obligations.\
- (2) In the event that a shortfall is found, requiring remedial measures such as the submission of a written explanation for the revenue shortfall from the governing board of the system and the

1 development of a plan to ensure that system revenues cover
2 system costs.

3 (2) Maintenance of a capital reserve fund by public water supply and
4 wastewater systems.

5 (3) Review of applications for grant funds to ensure that applicants'
6 grant match is funded from local revenues as opposed to another
7 grant.

8 (4) Development of benchmarks that systems must meet for proper
9 investing in water and sewer infrastructure.

10 (5) Notification of funding agencies when systems are failing to
11 operate in compliance with applicable state and federal water
12 quality standards.

13 **SECTION 2.** The agencies shall report on their findings and
14 recommendations to the Legislative Study Commission on Water and Wastewater
15 Infrastructure no later than October 1, 2010.

16 **SECTION 3.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

U

D

BILL DRAFT 2009-SYz-15 [v.1] (04/22)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 4:50:08 PM**

Short Title: Water Supply System Capacity Planning.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT THE ENVIRONMENTAL MANAGEMENT
COMMISSION MAY ADOPT RULES TO REQUIRE A PUBLIC WATER
SYSTEM TO INITIATE PLANNING FOR AN EXPANDED WATER
SUPPLY OR WATER TREATMENT CAPACITY ONCE THE PUBLIC
WATER SYSTEM REACHES 80 PERCENT OF ITS APPROVED
CAPACITY, AS RECOMMENDED BY THE LEGISLATIVE STUDY
COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-315(b1) is amended by adding a new
subdivision to read:

"(8) Require a public water system to initiate planning for an
expanded water supply or water treatment capacity once the
public water system reaches 80 percent of its approved capacity."

SECTION 2. This act is effective when it becomes law.

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

D

BILL DRAFT 2009-LHz-273* [v.5] (5/1)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 4:45:02 PM**

Short Title: Funds/Match For Fed. Water & Wastewater Funds.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS TO THE STATE'S WATER
3 INFRASTRUCTURE FUND TO BE USED TO MATCH THE FEDERAL
4 FUNDS AVAILABLE FOR WATER SUPPLY AND WASTEWATER
5 NEEDS AS RECOMMENDED BY THE LEGISLATIVE STUDY
6 COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** There is appropriated from the General Fund to the
9 Water Infrastructure Fund established in G.S. 159G-22 the sum of thirteen million
10 five hundred seventy-seven thousand six hundred seventy-three dollars
11 (\$13,577,673) for the 2010-2011 fiscal year to be used to match the federal funds
12 available for drinking water and water supply needs and for wastewater needs. The
13 funds appropriated by this act shall be allocated as follows:

14 (1) \$6,223,073 shall be allocated to the Drinking Water State
15 Revolving Fund to be used to match federal funds available for
16 water supply and drinking water needs; and

17 (2) \$7,354,600 shall be allocated to the Clean Water State Revolving
18 Fund to match federal funds available for wastewater needs.

19 **SECTION 2.** This act becomes effective July 1, 2010.

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

D

BILL DRAFT 2009-LHz-274* [v.10] (5/1)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 6:08:37 PM**

Short Title: Rural Center Funds/Water Infrastructure.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS TO THE RURAL ECONOMIC
3 DEVELOPMENT CENTER FOR CRITICAL WATER AND
4 WASTEWATER GRANTS AS RECOMMENDED BY THE LEGISLATIVE
5 STUDY COMMISSION ON WATER AND WASTEWATER
6 INFRASTRUCTURE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** Appropriation. – There is appropriated from the
9 General Fund to the Rural Economic Development Center, Inc., (Rural Center) the
10 sum of fifty million dollars (\$50,000,000) for the 2010-2011 fiscal year to be used
11 to provide grants to local government units for wastewater-related projects and for
12 public water system-related projects as provided by this section. Funds may also
13 be used to provide emergency water and sewer grants.

14 **SECTION 1.(b)** Definitions. – The definitions in G.S. 159G-20 apply
15 in this section. In addition, the following definitions shall apply in this section
16 unless otherwise provided:

17 (1) Ability to pay. – An assessment of the ability of a local
18 government unit to pay for a water infrastructure project as
19 calculated annually by the Division of Community Assistance in
20 the Department of Commerce.

21 (2) Economically distressed area. – Any of the following:

22 a. An economically distressed county as defined in
23 G.S. 143B-437.01.

24 b. That part of a county in which the poverty rate is at least
25 one hundred fifty percent (150%) of the State poverty rate.
26 The poverty rate is the percentage of the population whose
27 income is below the most recent federal poverty level set
28 by the U.S. Bureau of the Census.

1 c. If it is not a county, its ability to pay is less than fifty
2 percent (50%) of the ability to pay of the county in which
3 it is located.

4 (3) Rural county. – A county with a population density of fewer than
5 250 people per square mile based on the most recent federal
6 decennial census.

7 **SECTION 1.(c) Eligible Applicants; Eligible Projects.** – A local
8 government unit is eligible for a grant under this section if it meets the eligibility
9 requirements under subsection (d) of this section. The funds appropriated under
10 this section may be used to provide a supplemental grant that meets the
11 requirements of subsection (d) and subsection (e) of this section. The following
12 projects are eligible for receiving a grant under this section:

13 (1) Wastewater collection system.

14 (2) Wastewater treatment works.

15 (3) Public water system.

16 **SECTION 1.(d) Supplemental Grants.** – A supplemental grant is
17 available to match other funds to be applied to the construction costs of an eligible
18 project. Other funds include federal funds, State funds, and local funds. A
19 supplemental grant is subject to the following restrictions:

20 (1) Eligibility. – A local government unit is eligible for a
21 supplemental grant if it meets the following criteria:

22 a. It is a rural county or is located in one of these counties.

23 b. It adopts a resolution to set the household user fee for
24 water and sewer service in the area served by the project
25 at an amount that equals or exceeds the high-unit-cost
26 threshold.

27 (2) Maximum. – A supplemental grant shall not exceed five hundred
28 thousand dollars (\$500,000) unless the applicant meets one or
29 more of these descriptions:

30 a. It is an economically distressed county or is located in an
31 economically distressed county.

32 b. Its poverty rate is at least one hundred fifty percent
33 (150%) of the State poverty rate.

34 c. If it is not a county, its ability to pay is less than fifty
35 percent (50%) of the ability to pay of the county in which
36 it is located.

37 The maximum supplemental grant for an applicant meeting at
38 least one of these descriptions is the lesser of one million dollars
39 (\$1,000,000) or twenty-five percent (25%) of the total project
40 cost.

41 (3) Matching funds. – A local government unit shall match a
42 supplemental grant on a dollar-for-dollar basis unless the unit
43 meets one or more of the following descriptions, in which

1 instance the Rural Center may require a match of fifty percent
2 (50%) or less:

- 3 a. It is an economically distressed county or is located in an
4 economically distressed county.
- 5 b. Its poverty rate is at least one hundred fifty percent
6 (150%) of the State poverty rate.
- 7 c. If it is not a county, its ability to pay is less than fifty
8 percent (50%) of the ability to pay of the county in which
9 it is located.

10 A local government unit that meets one or more of these
11 descriptions may not provide less than a dollar-for-dollar match
12 if the supplemental grant amount requested exceeds five hundred
13 thousand dollars (\$500,000).

14 **SECTION 1.(e) Criteria for Grants.** – All projects must document a
15 current critical water or wastewater need affecting human health or the
16 environment or must document a critical economic development need. The criteria
17 in G.S. 159G-23, the criteria set out in this section, and any other criteria
18 established by the Board of Directors of the Rural Center shall apply to a grant
19 provided under this section. An application for a project that serves an
20 economically distressed area shall have priority over a project that does not. The
21 Board of Directors of the Rural Center may determine that a crisis need exists that
22 merits special consideration and may establish one or more subcategories of this
23 program to address applications that will meet the needs identified.

24 **SECTION 1.(f) Grant Applications.** – Any application for a grant
25 under this section shall be submitted by the local government unit to the Rural
26 Center. An application shall be submitted on a form prescribed by the Rural
27 Center and shall contain the information required by the Rural Center. An
28 applicant shall submit to the Rural Center any additional information requested by
29 the Rural Center to enable the Rural Center to make a determination on the
30 application. An application that does not contain information required for the
31 application or requested by the Rural Center is incomplete and is not eligible for
32 consideration.

33 **SECTION 1.(g) Environmental Assessment.** – An application
34 submitted under this section for a supplemental grant shall state whether the
35 project to be funded by the grant requires an environmental assessment. If the
36 application indicates that an environmental assessment is not required, it must
37 identify the exclusion in the North Carolina Environmental Policy Act, Article 1
38 of Chapter 113A of the General Statutes that applies to the project. An application
39 that does not identify an exclusion in the North Carolina Environmental Policy Act
40 shall include evidence that the environmental assessment of the project's probable
41 impacts on the environment was submitted to the Department of Environment and
42 Natural Resources or to the relevant federal agency providing financing for the
43 project.

1 **SECTION 1.(h)** Review of Applications and Award of Grant. – The
2 Rural Center shall review grant applications and award grants as provided by this
3 subsection:

- 4 (1) Point assignment. – The Rural Center shall review all grant
5 applications submitted under this section for an application
6 period, to be determined by the Rural Center, and shall rank each
7 application in accordance with the points assigned to the
8 evaluation criteria. Applications addressing a crisis need may be
9 ranked according to a special set of criteria or be reviewed for a
10 specifically determined application period. The Rural Center's
11 determination of rank is conclusive.
- 12 (2) Reconsideration. – When an application's rank is too low to
13 receive an award of a grant for the application period, the Rural
14 Center may consider a new application for the same project,
15 provided the application addresses questions from the previous
16 grant round. The Rural Center may reject any resubmission of the
17 same project that does not adequately address questions from the
18 previous grant round. The Rural Center's determination of
19 adequacy is conclusive.
- 20 (3) Notification of decision. – When the Rural Center determines
21 that an application's rank makes it eligible for an award of a
22 grant, the Rural Center shall send the applicant a letter of intent
23 to award the grant. The notice shall set out any conditions the
24 applicant must meet to receive an award of a grant. When the
25 applicant satisfies the conditions set out in the letter of intent, the
26 Rural Center shall send the applicant an offer to award a grant.
27 The applicant shall give the Rural Center written notice of
28 whether it accepts or rejects the offer. A grant is considered
29 awarded the date the offer to award the grant is sent by the Rural
30 Center.

31 **SECTION 1.(i)** Disbursement of Grant. – A grant awarded under this
32 section shall be disbursed in two or more payments based on the progress of the
33 project for which the grant was awarded. To obtain a payment, a grant recipient
34 shall submit a request for payment to the Rural Center and shall document the
35 expenditures for which the payment is requested. The Rural Center shall review
36 the payment request for compliance with all grant conditions.

37 **SECTION 1.(j)** Withdrawal of Grant. – An award for a supplemental
38 grant for a project is withdrawn if the applicant fails to enter into a construction
39 contract for the project within one year after the date of the award, unless the
40 Board of Directors of the Rural Center finds that the applicant has good cause for
41 the failure. If the Rural Center finds good cause for an applicant's failure, the Rural
42 Center shall set a date by which the applicant must take action or forfeit the grant.

1 **SECTION 1.(k)** Inspection of Project. – The Rural Center may inspect
2 a project as provided by this subsection:

3 (1) Authority. – The Rural Center may inspect a project for which it
4 awards a grant under this section to determine the progress made
5 on the project and whether the construction of the project is
6 consistent with the project described in the grant application. The
7 inspection may be performed by personnel of the Rural Center or
8 by a professional engineer licensed under Chapter 89C of the
9 General Statutes.

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

13 a. Is an officer or employee of the local government unit that
14 received the grant award for the project.

15 b. Is an owner, officer, employee, or agent of a contractor or
16 subcontractor engaged in the construction of the project
17 for which the grant was made.

18 **SECTION 1.(l)** Administration Costs. – The Rural Center may use a
19 portion of the funds appropriated under this section for administration, not to
20 exceed two percent (2%), for the life of the grant program created by this section.

21 **SECTION 1.(m)** Reporting Requirement. – The Rural Center shall
22 report annually to the Joint Legislative Commission on Governmental Operations
23 regarding the progress of the grant program created under this section. The report
24 required by this subsection may be included as part of the Rural Center's annual
25 report required by subsection 14.27(e) of S.L. 2009-451. The first report required
26 under this subsection is due no later than September 1, 2011.

27 **SECTION 1.(n)** Separate Accounts. – Each grant that is provided
28 under this section shall be administered through a separate account.

29 **SECTION 1.(o)** Loans Prohibited. – The Rural Center shall not use the
30 funds appropriated under this section to make loans.

31 **SECTION 2.** This act becomes effective July 1, 2010.

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**GENERAL ASSEMBLY OF NORTH CAROLINA
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H

D

BILL DRAFT 2009-LHz-275* [v.12] (5/2)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 6:38:16 PM**

Short Title: Water Infrastructure Needs/Close Info Gaps.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND
3 NATURAL RESOURCES, IN CONJUNCTION WITH OTHERS, TO
4 DEVELOP A STATEWIDE SURVEY TO SUPPLEMENT THE CURRENT
5 INFORMATION USED TO ASSESS THE STATE'S WATER AND
6 WASTEWATER INFRASTRUCTURE NEEDS AND TO DEVELOP A
7 PLAN FOR INCORPORATING THE INFORMATION COMPILED FROM
8 THE ENVIRONMENTAL PROTECTION AGENCY SURVEYS INTO THE
9 STATE WATER SUPPLY PLAN, AS RECOMMENDED BY THE
10 LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER
11 INFRASTRUCTURE.

12 Whereas, the data currently available to determine the State's water and
13 wastewater needs are the Environmental Protection Agency surveys of publicly
14 owned water and wastewater systems conducted every four years by the
15 Department of Environment and Natural Resources and the North Carolina Rural
16 Economic Development Center Water 2030 report; and

17 Whereas, the Water 2030 report, completed in 2005, provides a snapshot of
18 projected water and wastewater infrastructure needs through 2030, but was funded
19 as a one-time overview, and has not been updated since 2005; and

20 Whereas, while both the EPA surveys and Water 2030 are useful tools,
21 there continue to be gaps in the information used to determine the State's water
22 and wastewater infrastructure needs, particularly with regard to economic
23 development and growth related infrastructure needs, water system efficiency
24 measures, and costs related to the development of new water sources; Now
25 therefore,

26 The General Assembly of North Carolina enacts:

27 **SECTION 1.(a)** Statewide survey of water and wastewater
28 infrastructure needs to supplement EPA survey. -- The Department of

1 Environment and Natural Resources in conjunction with the Environmental
2 Finance Center at the School of Government at the University of North Carolina at
3 Chapel Hill shall establish a task force to develop a statewide survey to build on
4 the base of the existing Environmental Protection Agency water and wastewater
5 infrastructure survey process that will provide a more accurate assessment of
6 Statewide water and wastewater infrastructure needs. The Rural Economic
7 Development Center shall be included as a member of this task force if it chooses
8 to participate. If the Rural Economic Development Center does participate, then
9 the task force may also consider requesting information required to update the
10 Water 2030 report as part of the survey design. The Department of Environment
11 and Natural Resources shall be the lead agency in this group effort.

12 The survey shall be designed to obtain information relevant to and that
13 addresses the following information gaps that have been identified in the current
14 databases:

- 15 (1) Information on water and wastewater infrastructure needs related
16 to economic development and population growth.
- 17 (2) Information on water and wastewater system service areas.
- 18 (3) Information on drinking water needs relevant to determining the
19 need and the cost of proposed reservoir construction.
- 20 (4) Information on infrastructure needed to address failing water and
21 wastewater systems.
- 22 (5) Information on the infrastructure needs related to water system
23 efficiency to address the issue of water loss.

24 **SECTION 1.(b)** Update and reporting of survey information. -- When
25 designing the survey described in subsection (a) of this section, the task force shall
26 also consider how often the information provided by the survey should be updated.
27 The task force shall also consider how the survey results can be formulated and
28 summarized to provide an updated and easily understood report for use by the
29 General Assembly on combined water and wastewater infrastructure needs and
30 shall develop a model and format for that report.

31 **SECTION 1.(c)** Reporting requirement for statewide survey plan. --
32 The task force shall report its findings and recommendations and shall present the
33 proposed statewide survey and the proposed methodology for conducting the
34 survey to the Legislative Study Commission on Water and Wastewater
35 Infrastructure by October 1, 2010. The report shall include the estimated cost to
36 implement the survey and shall also include any legislative changes that may be
37 needed to implement the proposed survey.

38 **SECTION 2.(a)** Plan to incorporate information from needs survey
39 into State water supply plan. -- The Department of Environment and Natural
40 Resources shall develop a plan to incorporate relevant information obtained from
41 the Environmental Protection Agency surveys into the State water supply plan
42 which is based on information provided by local water supply plans prepared
43 pursuant to G.S. 143-355.1. In devising the plan to incorporate the needs survey

1 information into the State water supply plan the Department may consider whether
2 there are modifications regarding the information collected as part of the local
3 water supply plans or the methodology used to prepare the local water supply
4 plans that would make it easier to incorporate the needs survey information into
5 the State water supply plans, and if so, what those modifications would be.

6 **SECTION 2.(b)** Reporting requirement for plan to incorporate
7 infrastructure needs survey information into State water supply plan. -- The
8 Department of Environment and Natural Resources shall present its plan for
9 incorporating the information from the Environmental Protection Agency water
10 and wastewater infrastructure needs surveys into the State water supply plan to the
11 Legislative Study Commission on Water and Wastewater Infrastructure by
12 October 1, 2010. The Department of Environment and Natural Resources shall
13 include in its presentation the estimated cost of the plan and any legislative
14 changes that may be required to implement the plan.

15 **SECTION 3.** This act is effective when it becomes law.

DRAFT

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

D

BILL DRAFT 2009-LHz-276* [v.5] (05/03)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 1:40:47 PM**

Short Title: Survey Ag. Water Infrastructure Needs.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED
AN ACT TO DIRECT THE DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES AND THE DIVISION OF SOIL AND WATER
CONSERVATION IN THE DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES TO CONTINUE TO WORK WITH THE FARM
BUREAU AND OTHER AGRICULTURAL LEADERS AND
ORGANIZATIONS TO DEVELOP A PLAN TO IDENTIFY AND REPORT
AGRICULTURAL WATER AND WASTEWATER INFRASTRUCTURE
NEEDS AS RECOMMENDED BY THE LEGISLATIVE STUDY
COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Agriculture and Consumer Services in conjunction with the Division of Soil and Water Conservation, Department of Environment and Natural Resources, Farm Bureau, and the State's other agricultural leaders and organizations are currently in the process of developing a strategic plan for protecting agricultural water resources. The General Assembly directs the Department of Agriculture and Consumer Services and the Division of Soil and Water Conservation, Department of Environment and Natural Resources to continue to work with the Farm Bureau, farmers, and other agricultural leaders and organizations to develop a plan, to be updated on a regular basis, that will identify agricultural water and wastewater infrastructure needs that are not accounted for in the Environmental Protection Agency surveys of water and wastewater infrastructure needs. The plan shall also provide a mechanism for reporting the results of the data gathered to the General Assembly in a manner that is helpful in assessing legislative and budgetary issues that the General Assembly may need to address. The plan may also address methods to identify current and future agricultural water use needs and methods to ensure that those needs are met; water conservation practices; and water efficiency measures.

1 The Department of Agriculture and Consumer Services and the Division
2 of Soil and Water Conservation, Department of Environment and Natural
3 Resources shall report to the Legislative Study Commission on Water and
4 Wastewater Infrastructure by October 1, 2010, regarding the development of the
5 plan, the proposed methodology and timeframe for implementing the plan, the
6 estimated cost of the plan, and any legislative changes needed to implement the
7 plan.

8 **SECTION 2.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

D

BILL DRAFT 2009-LHz-279 [v.4] (05/06)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 8:09:51 PM**

Short Title: Conserve & Protect Ag Water Resources.

(Public)

Sponsors: Representative Crawford.

Referred to:

A BILL TO BE ENTITLED
AN ACT DIRECTING THE DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES AND THE DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES TO DESIGN A COST SHARE PROGRAM
TO ASSIST FARMERS AND LANDOWNERS WHO IMPLEMENT BEST
MANAGEMENT PRACTICES TO CONSERVE AND PROTECT WATER
RESOURCES RELATED TO AGRICULTURAL USE, AS
RECOMMENDED BY THE LEGISLATIVE STUDY COMMISSION ON
WATER AND WASTEWATER INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly recognizes the important role that farmers and individual landowners can play in helping to protect current and future water resources. Therefore, the General Assembly directs the Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources to work with farmers and landowners to encourage voluntary practices that conserve water use, increase the efficiency of private water use, and increase the water storage capacity by landowners. The General Assembly further directs the Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources jointly to design a cost share program to provide technical and financial support to farmers and landowners who want to implement best management practices to protect water resources related to agricultural use. The Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources shall report to the Legislative Study Commission on Water and Wastewater Infrastructure by October 1, 2010, regarding its progress in designing a cost share program. The report shall include the estimated cost of establishing and maintaining such a program and any legislative changes that may be needed to implement the program.

SECTION 2. This act is effective when it becomes law.

DRAFT

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

D

BILL DRAFT 2009-LHz-281* [v.3] (05/06)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2010 8:08:25 PM**

Short Title: Water Infrastructure Database/Task Force.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A TASK FORCE TO DEVELOP A PLAN FOR THE
3 ESTABLISHMENT AND MAINTENANCE OF A STATEWIDE WATER
4 AND WASTEWATER INFRASTRUCTURE RESOURCE AND FUNDING
5 DATABASE AS RECOMMENDED BY THE LEGISLATIVE STUDY
6 COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** The Department of Environment and Natural
9 Resources, the Department of Commerce, the Department of the Treasurer, the
10 Clean Water Management Trust Fund, the State Water Infrastructure Commission,
11 and the Environmental Finance Center at the School of Government at the
12 University of North Carolina at Chapel Hill shall establish a task force to work
13 together jointly to design a plan for the establishment and maintenance of a
14 statewide water and wastewater infrastructure resource and funding database. The
15 North Carolina League of Municipalities, the North Carolina Association of
16 County Commissioners, the Rural Economic Development Center, and the United
17 States Department of Agriculture shall also be included as joint members of the
18 task force if they choose to participate in the study. The Department of
19 Environment and Natural Resources shall be the lead agency for the task force.
20 The task force may also work with other interested stakeholders in its discretion.

21 **SECTION 1.(b)** The purpose of the water and wastewater resource
22 funding database is to provide one source of information with the ability to track
23 and locate all of the current water and wastewater infrastructure project needs and
24 funding patterns in this State. Federal and State agencies (e.g. EPA), funding
25 groups and non-profits spend a lot of money and resources trying to determine
26 what the water infrastructure needs are in North Carolina.

27 In developing the plan the task force shall consider the consolidation
28 and integration of information that is currently being collected by State agencies,

1 nonprofit corporations, institutions of higher education, and other entities that is
2 relevant to water and wastewater infrastructure and water use.

3 The task force shall consider a system design that is capable of
4 compiling and indexing all of the items listed in subdivisions (1) through (11) of
5 this subsection and shall identify which of those items should be included in the
6 database compiled by the system. The task force shall also indicate in its findings
7 the merits of including or excluding each item. The items for consideration are as
8 follows:

- 9 (1) Current and proposed infrastructure projects.
- 10 (2) Funding patterns and the status of each infrastructure project.
- 11 (3) System information (interconnections, fiscal).
- 12 (4) Strategic plans.
- 13 (5) Local water supply plans.
- 14 (6) Water resource maps and publications,
- 15 (7) Systems management information.
- 16 (8) Reporting and regulatory requirements.
- 17 (9) Guidance and training documents.
- 18 (10) Procedural guidance and forms for project implementation and
19 funding.
- 20 (11) Internet links to support services.

21 **SECTION 1.(c)** In addition to the items set out in subsection (b) of this
22 section the task force may also consider the following:

- 23 (1) The consolidation and integration of information that is currently
24 being collected by State agencies, nonprofit corporations,
25 institutions of higher education, and other entities that is relevant
26 to water and wastewater infrastructure and water use.
- 27 (2) The possibility of digitizing common application forms currently
28 being utilized by certain funding agencies as well as digitizing
29 past funding documents and records.
- 30 (3) Information streamlining processes that can be implemented in
31 the system design.
- 32 (4) The preliminary design and structural options for developing a
33 database of water and wastewater needs.
- 34 (5) How current resources and existing efforts can be leveraged to
35 maximize funding for local water systems.
- 36 (6) Determination of what low and no incremental cost data
37 integration or implementation methods for assessment of water
38 system needs exist.
- 39 (7) Implementing methods and data that enhance the sharing of
40 infrastructure development plans and documents.
- 41 (8) The design for a more comprehensive and robust database to be
42 built and constructed if more funds become available for the
43 database in the future.

1 (9) Any other information relevant to the design of the database
2 system described in subsection (b) of this section.

3 **SECTION 1.(d)** The task force shall present its proposed plan and
4 report its findings and recommendations to the Legislative Study Commission on
5 Water and Wastewater Infrastructure by October 1, 2010. The report shall include
6 the estimated cost to create the database and the estimated cost to maintain such a
7 system. The report shall also include any legislative changes that may be needed
8 to implement the proposed plan.

9 **SECTION 2.** This act is effective when it becomes law.

AUTHORIZING LEGISLATION

S.L. 2009-574, PART 43

PART XLIII. LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE (Crawford, Owens)

SECTION 43.1. There is created the Legislative Study Commission on Water and Wastewater Infrastructure. The Commission shall consist of 17 members appointed as follows:

- (1) Four members of the House of Representatives, appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate, appointed by the President Pro Tempore of the Senate.
- (3) Two members appointed by the Governor.
- (4) The Secretary of the North Carolina Department of Environment and Natural Resources or the Secretary's designee.
- (5) The Secretary of the North Carolina Department of Commerce or the Secretary's designee.
- (6) The President of the North Carolina Rural Economic Development Center or the President's designee.
- (7) The Executive Director of the North Carolina Clean Water Management Trust Fund or the Executive Director's designee.
- (8) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
- (9) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (10) The Chair of the State Water Infrastructure Commission.

SECTION 43.2. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair. The Commission may meet at any time upon the joint call of the cochairs. A quorum of the Commission shall be a majority of its members.

Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

In addition, the State agencies and nonprofits serving on the Commission shall cooperate in providing information and additional staff resources as needed to accomplish the work of the Commission.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 43.3. The Legislative Study Commission on Water and Wastewater Infrastructure shall focus on the development of an ongoing process to identify and regularly report to the North Carolina General Assembly on statewide water and wastewater infrastructure needs and to improve the delivery of State appropriated water and wastewater programs. The Commission shall specifically do all of the following:

- (1) Evaluate the information provided through the drinking water and wastewater needs assessment prepared by the Environmental Protection Agency (EPA) every four years; the drinking water and wastewater needs surveys currently done by the North Carolina Department of Environment and Natural Resources in support of the EPA needs assessment; the data compiled as part of Water 2030 by the North Carolina Rural Economic Development Center, Inc.; and any other existing data sets in order to determine what information currently exists and where there may be gaps in the data.
- (2) Study an ongoing method for regularly determining and reporting on the State's water and wastewater infrastructure needs, including the subject of small towns whose water or sewer rates exceed the high-unit-cost threshold as defined in G.S. 159G-20.
- (3) Select a method for identifying and reporting on infrastructure needs in the future.
- (4) Review infrastructure funding priorities currently set out in State law to determine whether the priorities appropriately reflect the State's most pressing needs in light of future growth projections.
- (5) Recommend changes to infrastructure funding priorities and appropriations processes to ensure that funds are used to meet the State's most pressing needs.
- (6) Ascertain the capacity and role of the State in bridging identified gaps between funding priorities and available funds.
- (7) Determine what steps funding agencies can take to improve the delivery of existing funding programs, including the following options:
 - a. Developing common application requirements;
 - b. Scheduling regular joint meetings between funders and applicants;
 - c. Where projects are jointly funded, exploring options to share and improve oversight responsibilities; and
 - d. Coordinating reporting requirements to produce a single integrated funders report on an annual basis.

SECTION 43.4. As used in subdivision (7) of Section 43.3, "funding agencies" means the Department of Commerce, the Department of Environment and Natural Resources, the Clean Water Management Trust Fund, and the Rural Economic Development Center.

SECTION 43.5. On or before May 1, 2010, the Legislative Study Commission on Water and Wastewater Infrastructure shall submit an interim report to the 2009 General Assembly, Regular Session 2010. This interim report shall include any findings or recommendations of the Commission at that time. In addition, no later than the convening of the 2011 General Assembly, the Commission shall submit a final report to the General Assembly. This final report shall include the Commission's findings and recommendations under this study, including any legislative or administrative proposals. The Commission shall terminate upon the earlier of the filing of its final report or the convening of the 2011 General Assembly.

MEMBERSHIP

Pursuant to S.L. 2009-574, Part 43, the Legislative Study Commission on Water and Wastewater Infrastructure consists of 17 members. Four of these members are appointed by the President Pro Tempore of the Senate, four members are appointed by the Speaker of the House of Representatives, two members are appointed by the Governor, and the remaining seven members are ex-officio voting members.

President Pro Tempore of the Senate Appointments:

Sen. Charles W. Albertson, Co-Chair

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Sen. David Hoyle

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Speaker of the House of Representatives Appointments:

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Rep. William “Bill” Owens

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Appointments by Governor:

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Ex Officio Members:

The Secretary of Environment and Natural
Resources or the Secretary's designee

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The Secretary of Commerce or the
Secretary's Designee

Mr. Dale Carroll

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The President of the North Carolina Rural
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Mr. Billy Ray Hall

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DRAFT

**APPENDIX A:
MEMORANDUM FROM THE RURAL
CENTER DATED APRIL 15, 2010**

TO: The Honorable Charles Albertson, Co-Chairman
 The Honorable James Crawford, Co-Chairman
 Water/Wastewater Infrastructure Study Commission

FROM: Billy Ray Hall

cc: Staff to the Study Commission

SUBJECT: Short-term Items for Commission Consideration

DATE: April 15, 2010

As our staff completed their review of the latest round of applications, we identified several areas that might be appropriate for the study commission's attention. The projects we have seen through four rounds of Clean Water Partners grants have led to the identification of several areas that may be appropriate for the study commission's consideration for short-term action. To make sure these points are among the options that the members may want to examine, I propose to offer the attached five options for consideration by the study commission.

I look forward to working with you and the other members of the study commission to develop interim recommendations that address the committee's charge. By copy of this memorandum, I am sending my suggestions to the other members. Please let me know if any of these points need further explanation.

Possible options for short session/interim report action

- **Require action before the water's gone**

Authorize DENR to establish a requirement for water systems to initiate planning for an expanded water supply when the average daily demand reaches 80% of capacity (currently a guideline for water and a requirement for sewer)

- Note: the requirement on the sewer facilities affects treatment plant capacity (80% of treatment capacity requires the system to begin planning and at 90% of capacity must act). The current 80% guideline for water systems affects the water supply, not the water treatment capacity.

- **Make leaking line repairs a priority**

Authorize state funded programs to give funding priority to the repair or replacement of leaking water lines in communities where financial constraints limit the water system's ability to implement water conservation and efficiency measures.

- Note: applications to repair leaking lines receive priority points under the common criteria (GS 159G-23(3) d.). The rules for the Drinking Water SRF provide eligibility for projects that install or replace distribution or transmission pipe to prevent contamination. The proposal here is to make clear that repair of leaking lines (consistent with the imperative provided in the drought bill) is a state priority.

- **Consolidate water system reports**

To reduce the number of reports required for communities, consolidate the local water system efficiency requirements that are part of the drought bill (G.S. 143-355.4) into the material required for local water supply plans (G.S. 143-355(l)).

- Note: water systems that apply for state assistance to extend water lines or to increase water treatment capacity must provide information that also is contained (at least in part) in their water supply plans. With the exception of the financial information required for drought bill compliance, this option would incorporate the drought bill's system information into the water supply plan and be available by reference, reducing the number of reports of the same/similar information required for water systems.

- **Standardize the number source**

To eliminate confusion for potential communities applying to multiple agencies for assistance, specify that all state funded programs that use median household income will use the updated census numbers in calculating the income amount.

- Note: requires a legislative change to one program operated by the Rural Center (Clean Water Partners Infrastructure) that is directed to use the 2000 Census numbers.

- **Facilitate assimilation of failing systems**

As an incentive to regionalize services, authorize assistance to improve the infrastructure in order to consolidate a failing non-profit system with another system that is eligible for state assistance.

- Note: this action permits the receiving system to make improvements in infrastructure it does not own in order to reduce the system's risk of adding non-compliant infrastructure. Should be promoted in cases where the receiving system is taking on the failing system to further the state's aims for consolidating services, or for alleviating environmental or public health concerns, or where the failing system is bankrupt and will leave its customers without potable water. Public Water Supply has a new program designed to facilitate the consolidation of systems. One project has been funded under the "disadvantaged communities" program thus far. By establishing this aim as a priority, other programs could be permitted to target their assistance to this area, as well.