

State Water Infrastructure Authority
Meeting Date: July 17, 2014
Agenda Item G – Potential Changes to NCGS 159G

Division of Water Infrastructure Staff Report

A. Background

NCGS 159G is the legislation that created the Division of Water Infrastructure and the State Water Infrastructure Authority; it also defines and governs the water and wastewater funding programs that are administered by the Division. The legislation has been amended many times over the years and contains many very specific requirements. With the creation of the State Water Infrastructure Authority (SWIA) and the powers and duties assigned to it, the Division believes that there are areas of the legislation that should be modified to provide SWIA the flexibility to fully carry out its duties. These areas include the development of criteria and guidelines for making loans and grants, as well as ways to coordinate and maximize the use of funding resources to their fullest potential. In addition, the legislation requires an annual report (due November 1) including any recommended changes to 159G.

It should be noted that making changes to statutes is complex and takes a considerable amount of “calendar time” to accomplish. Therefore, modifying statutes cannot be accomplished quickly enough to allow the SWIA to make periodic changes to improve the criteria and guidelines to allow state funds (within the Wastewater Reserve and Drinking Water Reserve) to be used in the most beneficial ways for applicants, which may change over time. To provide a mechanism for making these periodic changes, it will be suggested that the Division develop a “Reserve Intended Use Plan” (similar to the Intended Use Plans for the federal SRF programs) to contain the basic funding framework for the Reserve programs and explain how a priority rating system will be utilized to identify projects for funding that will address the greatest need and/or provide the greatest positive environmental impact on water resources.

B. Key Areas of Potential Changes

The recommended changes are based on two key aspects:

- First, Session Law 2014-42 created a Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission) whose findings may lead to statutory changes. Note that one of the Commission members to be appointed by the Governor is also a member of SWIA. The Commission is designated to report back to the General Assembly in 2015 (interim) and 2016 (final report). Therefore, SWIA should take into consideration any findings of the Commission. Also, any potential broad or significant changes will take more time to evaluate than time available before the submittal of the November 1 report.
- Second, the recommended changes generally fall into two categories – staff recommended clarifications and SWIA recommended changes that require immediate attention.

1. Criteria for Utilization of State Loan and Grant Funds

Section 159G-23 contains 13 “Common Criteria” which the Division *must* include in the priority rating system for the evaluation of projects that are funded with State funds (not federal funds). In order to meet the criteria and receive priority points, some of the criteria may place an undue burden on rural and/or economically distressed potential applicants, particularly the criteria that cover comprehensive land use planning, flood hazard ordinances, and coastal habitat protection. This is not to say that these criteria are not important, but they often have no bearing on the critical need for a specific infrastructure project within a community. The suggestion will be made to delete

this entire section and include all criteria and priority points within the new Reserve Intended Use Plan. Alternatively, select criteria that SWIA feels are important to remain could continue to be stated as items that must be *considered* while still providing SWIA the flexibility to include and to what degree.

2. Grant Eligibility and Additional Types of State Grants

Section 159G-33.(a)(2) and (3) and Section 159G-34.(a)(2) and (3) provide for the high unit cost grants (HUC) and the technical assistance grants (TAG) from the Wastewater Reserve and the Drinking Water Reserve, respectively. As SWIA had discussed and as the Division has heard from various stakeholders, it will be suggested that grant funds be made available for other uses, and not restricted to HUC and TAG grants. Other types of grants could include those that are more proactive in nature such as:

- Developing a fiscal responsibility plan to comply with the new CWSRF requirement that applicants that do not have a binding commitment by October 1 must have implemented a fiscal sustainability plan that includes an inventory of critical assets
- Developing an Inventory Assessment, enabling project needs to be prioritized and Capital Improvement Plans (CIPs) to be prepared. These assessments will also help the Division provide more accurate information about infrastructure needs in the state, for reporting to the EPA Needs Survey.

The suggestion will be made to broaden eligible grant uses within the Reserves and provide discretion on allocations through the new Reserve Intended Use Plan.

In addition to other types of grants, it will be suggested that the criteria for being eligible to receive a grant be modified. Currently and in the past, eligible grantees were often restricted to those located within certain county tiers and/or were required to be above the high unit cost threshold (which is based on user fees and median household income). A suggestion to modify the eligibility to receive state grant funds could base eligibility on other criteria. Eligibility could also be tiered so that grants would only pay for "X%" of a project at a lower tier or 100% of a project for those that meet the most disadvantaged criteria.

3. Limits on State Loan and Grant Amounts

Section 159G-36.(c) sets limits on the amount of state loan and grant funds that can be awarded to any single entity. Loans are limited to \$3 million per fiscal year or \$3 million over three fiscal years. HUC grants are limited to \$3 million over three fiscal years. TAGs are limited to \$50,000 over 3 fiscal years. The suggestion will be made to modify these limits and potentially include the limits within the new Reserve Intended Use Plan.

4. Environmental Assessment and Public Hearings

Section 159G-38 requires a full NC Environmental Policy Act-compliant Environmental Assessment (EA) or Environmental Impact Statement (EIS) to be completed for funding. The Division believes this creates a regulatory burden for applicants since they are required to expend funds to develop an EA before they know if their project will receive funding. The suggestion will be made to delete this entire section.

5. Length of Loan Term

In Section 159G-40, suggestions will be made to modify the maximum loan term from 20 years to 30 years to be consistent with the 2014 Clean Water Act changes. For many infrastructure projects (e.g., sewer collector lines) the expected life is longer than the current limit of 20 years.

6. Transfer of State Grant Funds Between Grant Programs

Suggestions will be made to modify Section 159G-22 to allow the Division and SWIA the flexibility to maximize the use of state grants by allowing the transfer of funds among the four different grant programs (Wastewater High Unit Cost, Wastewater Technical Assistance, Drinking Water High Unit Cost and Drinking Water Technical Assistance).

7. No Transfer of State Loan Funds to State Grant Programs

Suggestions will also be made to modify Section 159G-22 to prohibit the transfer of state funds between the state loan programs and the four different grant programs.

8. Inclusion of the Community Development Block Grant-Infrastructure Program

NCGS 159G does not currently include any provisions for the Community Development Block Grant-Infrastructure (CDBG-I) Program that is now administered by the Division. Appropriate changes to include this program in the Statute will be suggested.

C. Other Areas of Potential Changes

Definitions

Changes to Section 159G-20 will be needed to provide definitions for new items that may be included in the suggested modifications. Two specific changes to the definitions are proposed:

- 159G-20.(1a)(a): Remove this item to allow flexibility in establishing an appropriate number of years for projected growth and/or percent industrial growth.
- 159G-20.(9) and (10): Remove or redefine these items defining high unit cost projects and high unit cost thresholds to allow for modification of values that may need to change over time.

Chapter 159G.
Water Infrastructure.

Article 1.

General Provisions.

§§ 159G-1 through 159G-18: Repealed by Session Laws 2005-454, s. 2, effective January 1, 2006.

§ 159G-19. Reserved for future codification purposes.

§ 159G-20. Definitions.

The following definitions apply in this Chapter:

- (1) 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.
- (1a) Construction costs. - The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:
 - a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.
 - b. Legal, fiscal, administrative, and contingency costs.
 - c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.
 - d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.
 - e. The cost to acquire real property or an interest in real property.
- (2) CWSRF. - The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (3) Department. - The Department of Environment and Natural Resources.
- (4) Repealed by Session Laws 2011-145, s. 13.3(ggg), effective July 1, 2011.
- (5) Repealed by Session Laws 2013-360, s. 14.21(d), effective July 1, 2013 and Repealed by Session Laws 2013-413, s. 57(q), effective August 23, 2013.
- (5a) Repealed by Session Laws 2013-360, s. 14.21(d), effective July 1, 2013.
- (5b) Division. - Division of Water Infrastructure.
- (6) Drinking Water Reserve. - The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (7) DWSRF. - The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (8) Grant. - A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.

- (9) High-unit-cost project. - A project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period.
- (10) High-unit-cost threshold. - Either of the following amounts determined on the basis of data from the most recent federal decennial census and updated by the U.S. Department of Housing and Urban Development's annual estimated income adjustment factors:
- a. One and one-half percent (1.5%) of the median household income in an area that receives both water and sewer service.
 - b. Three-fourths of one percent (3/4%) of the median household income in an area that receives only water service or only sewer service.
- (10a) Investor-owned drinking water corporation. - A corporation owned by investors and incorporated solely for the purpose of providing drinking water services for profit.
- (11) Loan. - A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.
- (12) Local Government Commission. - The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.
- (13) Local government unit. - Any of the following:
- a. A city as defined in G.S. 160A-1.
 - b. A county.
 - c. A consolidated city-county as defined in G.S. 160B-2.
 - d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.
 - e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.
 - f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
 - g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.
 - h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.
 - i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.
- (14) Nonprofit water corporation. - A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.
- (15) Public water system. - Defined in G.S. 130A-313.

- (16) Reserved.
- (17) Reserved.
- (18) Secretary. - The Secretary of Environment and Natural Resources.
- (19) State. - The State of North Carolina.
- (20) Stormwater quality project. - A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.
- (21) Targeted interest rate project. - Either of the following types of projects:
 - a. A high-unit-cost project that is awarded a loan.
 - b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.
- (22) Treasurer. - The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.
- (23) Wastewater collection system. - A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.
- (24) Wastewater Reserve. - The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (25) Wastewater system. - A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.
- (26) Wastewater treatment works. - The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.
- (27) Water Infrastructure Fund. - The fund established in G.S. 159G-22. (2005-454, s. 3; 2010-151, s. 1; 2011-145, ss. 13.3(ggg), 13.11A(a); 2013-360, s. 14.21(d); 2013-413, s. 57(q).)

§ 159G-21. Revenue for water projects.

This Chapter governs the use of the following revenue:

- (1) Revenue appropriated to the Department to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of the federal funds.
- (2) Revenue appropriated to the Department to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of these funds. (2005-454, s. 3.)

§ 159G-22. Water Infrastructure Fund.

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

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

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

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

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

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

(g) Drinking Water Accounts. - The Department is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34. (2005-454, s. 3.)

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

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

- (1) Public necessity. - An applicant must explain how the project promotes public health and protects the environment. A project that improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.
- (2) Effect on impaired waters. - A project that improves designated impaired waters of the State has priority.
- (3) Efficiency. - A project that achieves efficiencies in meeting the State's water infrastructure needs or reduces vulnerability to drought consistent with Part 2A of Article 21 and Article 38 of Chapter 143 of the General Statutes by one of the following methods has priority:
 - a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.
 - b. Conservation or reuse of water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.
 - c. Construction of an interconnection between water systems intended for use in drought or other water shortage emergency.
 - d. Repair or replacement of leaking waterlines to improve water conservation and efficiency or to prevent contamination.
 - e. Replacement of meters and installation of new metering systems.
- (4) Comprehensive land-use plan. - A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

- (5) Flood hazard ordinance. - A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.
- (6) Sound management. - A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.
- (6a) Asset management plan. - A project submitted by a local government unit with more than 1,000 service connections that has developed and is implementing an asset management plan has priority over a project submitted by a local government unit with more than 1,000 service connections that has not developed or is not implementing an asset management plan.
- (7) Capital improvement plan. - A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.
- (8) Coastal habitat protection. - A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan.
- (9) High-unit-cost threshold. - A high-unit-cost project has priority over projects that are not high-unit-cost projects. The priority given to a high-unit-cost project shall be set using a sliding scale based on the amount by which the applicant exceeds the high-unit-cost threshold.
- (10) Regionalization. - A project to provide for the planning of regional public water and wastewater systems, to provide for the orderly coordination of local actions relating to public water and wastewater systems, or to help realize economies of scale in regional public water and wastewater systems through consolidation, management, merger, or interconnection of public water and wastewater systems has priority. If an applicant demonstrates that it is not feasible for the project to include regionalization, the funding agency shall assign the project the same priority as a project that includes regionalization.
- (11) State water supply plan. - A project that addresses a potential conflict between local plans or implements a measure in which local water supply plans could be better

coordinated, as identified in the State water supply plan pursuant to G.S. 143-355(m), has priority.

- (12) Water conservation measures for drought. - A project that includes adoption of water conservation measures by a local government unit that are more stringent than the minimum water conservation measures required pursuant to G.S. 143-355.2 has priority.
- (13) Low-income residents. - A project that is located in an area annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents has priority. For purposes of this section, low-income residents are those with a family income that is eighty percent (80%) or less of median family income. (2005-454, s. 3; 2008-143, s. 15; 2010-151, s. 2; 2011-145, s. 13.3(hhh); 2011-396, s. 11.2; 2013-360, s. 14.21(e); 2013-413, s. 57(r).)

§ 159G-24. Fee imposed on a loan or grant from Water Infrastructure Fund.

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

(b) Departmental Receipt. - The fee on a loan from the Water Infrastructure Fund is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Water Infrastructure Fund is a departmental receipt of the Department and must be applied to the Department's costs in administering grants from these Reserves. (2005-454, s. 3; 2012-142, s. 12.01.)

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

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

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

(b) The Department may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action must be credited to the account in the Wastewater Reserve from which the funds were expended. (2005-454, s. 3.)

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

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

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

- (1) The beginning and ending balance of the account for the fiscal year.
- (2) The amount of revenue credited to the account during the fiscal year, by source.
- (3) The total amount of loans and grants awarded from the account, by type, and the amount of any expenditure for emergency corrective action made from the account.
- (4) For each loan or grant awarded, the recipient of the award, the amount of the award, the amount of the award that was disbursed, and the amount of the award remaining to be disbursed in a subsequent fiscal year.
- (5) The amount disbursed for loans and grants awarded but not disbursed in a prior fiscal year and the amount remaining to be disbursed in a subsequent fiscal year.
- (6) An assessment of the expected impact on water quality and water supply of the projects for which the loans and grants were awarded. (2005-454, s. 3; 2011-145, s. 13.3(iii); 2013-360, s. 14.21(f); 2013-413, s. 57(s).)

§ 159G-27. Reserved for future codification purposes.

§ 159G-28. Reserved for future codification purposes.

§ 159G-29. Reserved for future codification purposes.

Article 2.

Water Infrastructure Loans and Grants Administered by Department.

§ 159G-30. Department's responsibility.

The Department, through the Division of Water Infrastructure, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. (2005-454, s. 3; 2011-145, s. 13.3(jjj); 2013-360, s. 14.21(g); 2013-413, s. 57(t).)

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

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. An investor-owned drinking water corporation is also eligible to apply for a loan or grant from the DWSRF. Other entities are not eligible for a loan or grant from these accounts. (2005-454, s. 3; 2011-145, s. 13.11A(b).)

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

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

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

- (1) Wastewater collection system.
- (2) Wastewater treatment works.
- (3) Stormwater quality projects, including innovative stormwater management projects and pilot projects.
- (4) Nonpoint source pollution project.

(c) Drinking Water Reserve. - The Department is authorized to make loans and grants from the Drinking Water Reserve for public water system projects. (2005-454, s. 3; 2013-360, s. 14.21(h).)

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

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

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

(b) Interaccount Transfer. - The Secretary may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan. (2005-454, s. 3.)

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

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

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

(b) Interaccount Transfer. - The Secretary may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan. (2005-454, s. 3.)

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

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

(b) Reserves. - The common criteria in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. (2005-454, s. 3.)

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

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

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

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

- (1) The amount of loans awarded for a fiscal year may not exceed three million dollars (\$3,000,000).
- (2) The amount of loans awarded for three consecutive fiscal years for targeted interest rate projects may not exceed three million dollars (\$3,000,000).
- (3) The amount of high-unit-cost grants awarded for three consecutive fiscal years may not exceed three million dollars (\$3,000,000).
- (4) The amount of technical assistance grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars (\$50,000). (2005-454, s. 3.)

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

An application [for a loan or grant from the] CWSRF, the Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the Division of Water Infrastructure [of the Department. An application must] be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application [or] requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article. (2005-454, s. 3; 2011-145, s. 13.3(kkk); 2013-360, s. 14.21(i); 2013-413, s. 57(u).)

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

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

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

(c) Hearing. - The Division of Water Infrastructure may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written

objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application. (2005-454, s. 3; 2011-145, s. 13.3(III), (mmm); 2013-360, s. 14.21(j); 2013-413, s. 57(v).)

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

(a) Point Assignment. - The Division of Water Infrastructure must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application for the Authority's review. The Authority must consider the Division's determination of rank when the Authority determines an application's rank. The Authority's determination of rank is conclusive.

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

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

(d) Notification of Decision. - When the Authority determines that an application's rank makes it eligible for an award of a loan or grant, the Division must send the applicant a letter of intent to award the loan or grant. The notice must set out any conditions the applicant must meet to receive an award of a loan or grant. When the applicant satisfies the conditions set out in the letter of intent, the Division must send the applicant an offer to award a loan or grant. The applicant must give the Division written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued. (2005-454, s. 3; 2011-145, s. 13.3(nnn); 2013-360, s. 14.21(k); 2013-413, s. 57(w).)

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

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

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

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

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

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

(d) Debt Instrument. - A local government unit, a nonprofit water corporation, and an investor-owned drinking water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units, nonprofit water corporations, and investor-owned drinking water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding. (2005-454, s. 3; 2011-145, s. 13.11A(c).)

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

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years after the date of the letter, unless the Department finds that the applicant has good cause for the failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the Department finds that the applicant has good cause for the failure. If the Department finds good cause for an applicant's failure, the Department must set a date by which the applicant must take action or forfeit the loan or grant. (2005-454, s. 3.)

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

The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested. (2005-454, s. 3.)

§ 159G-43. Inspection of project.

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

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

- (1) Is an officer or employee of the local government unit, nonprofit water corporation, or investor-owned drinking water corporation that received the loan or grant award for the project.
- (2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made. (2005-454, s. 3; 2011-145, s. 13.11A(d).)

§ 159G-44. Rules.

The Department may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the Department. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The Department must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy. (2005-454, s. 3.)

§ 159G-45. Reserved for future codification purposes.

§ 159G-46. Reserved for future codification purposes.

§ 159G-47. Reserved for future codification purposes.

§ 159G-48. Reserved for future codification purposes.

§ 159G-49. Reserved for future codification purposes.

§ 159G-50. Reserved for future codification purposes.

Article 3.

[Reserved.]

§§ 159G-51 through 159G-64: Reserved for future codification purposes.

Article 4.

State Water Infrastructure Commission.

§§ 159G-65 through 159G-67: Repealed by Session Laws 2013-360, s. 14.21(c), effective July 1, 2013.

§ 159G-68: Reserved for future codification purposes.

§ 159G-69: Reserved for future codification purposes.

Article 5.

State Water Infrastructure Authority.

§ 159G-70. State Water Infrastructure Authority created.

(a) Authority Established. - The State Water Infrastructure Authority is created within the Department of Environment and Natural Resources.

(b) Membership. - The Authority consists of nine members as follows:

- (1) The Director of the Division of Water Infrastructure of the Department or the Director's designee who is familiar with the water infrastructure financing, regulatory, and technical assistance programs of the Department.
- (2) The Secretary of Commerce or the Secretary's designee who is familiar with the State programs that fund water or other infrastructure improvements for the purpose of promoting economic development.
- (3) The Director of the Local Government Commission or the Director's designee who is familiar with the functions of the Commission.
- (4) One member who is a professional engineer in the private sector and is familiar with the development of infrastructure necessary for wastewater systems, to be appointed by the Governor to a term that expires on July 1 of even-numbered years.
- (5) One member who is knowledgeable about, and has experience related to, direct federal funding programs for wastewater and public water systems, to be appointed by the Governor to a term that expires on July 1 of odd-numbered years.
- (6) One member who is knowledgeable about, and has experience related to, urban local government wastewater systems or public water systems, to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of even-numbered years.
- (7) One member who is knowledgeable about, and has experience related to, rural local government wastewater systems or public water systems, to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of odd-numbered years.
- (8) One member who either (i) is a county commissioner of a rural county or (ii) resides in a rural county and is knowledgeable about, and has experience related to, public health services, to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of even-numbered years.
- (9) One member who is familiar with wastewater, drinking water, and stormwater issues and related State funding sources, to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of odd-numbered years.

(c) Terms. - The members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall serve two-year terms. The other members, who are ex officio members or designees of those members, shall serve until they are no longer in office or are replaced with another designee.

(d) Chair. - The Director of the Division of Water Infrastructure, or the Director's designee, shall serve as Chair of the Authority. The Chair must call the first meeting. The Chair shall serve as a nonvoting member, provided, however, that the Chair shall vote to break a tie.

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

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

(g) Compensation. - Each member of the Authority shall receive no salary as a result of serving on the Authority but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. (2013-360, s. 14.21(b); 2013-363, s. 5.12.)

§ 159G-71. State Water Infrastructure Authority; powers and duties.

The Authority has the following additional duties:

- (1) After reviewing the recommendations for grants and loans submitted to it by the Division, to determine the rank of applications and to select the applications that are eligible to receive grants and loans, consistent with federal law.
- (2) To establish priorities for making loans and grants under this Chapter, consistent with federal law.
- (3) To review the criteria for making loans and grants under G.S. 159G-23 and make recommendations, if any, to the Department for additional criteria or changes to the criteria, consistent with federal law.
- (4) To develop guidelines for making loans and grants under this Chapter, consistent with federal law.
- (5) To develop a master plan to meet the State's water infrastructure needs.
- (6) To assess and make recommendations on the role of the State in the development and funding of wastewater, drinking water, and stormwater infrastructure in the State.
- (7) To analyze the adequacy of projected funding to meet projected needs over the next five years.
- (8) To make recommendations on ways to maximize the use of current funding resources, whether federal, State, or local, and to ensure that funds are used in a coordinated manner.
- (9) To review the application of management practices in wastewater, drinking water, and stormwater utilities and to determine the best practices.
- (10) To assess the role of public-private partnerships in the future provision of utility service.

(11) To assess the application of the river basin approach to utility planning and management.

(12) To assess the need for a "troubled system" protocol. (2013-360, s. 14.21(b).)

§ 159G-72. State Water Infrastructure Authority; reports.

No later than November 1 of each year, the Authority shall submit a report of its activity and findings, including any recommendations or legislative proposals, to the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the Legislative Services Commission. (2013-360, s. 14.21(b).)