

State Water Infrastructure Authority
Meeting Date: July 13-14, 2022
Agenda Item V – Revised Draft ARPA Stormwater Fund Entity Eligibility Requirements

Division of Water Infrastructure Staff Report

Background

At its meeting on April 14, 2022, the State Water Infrastructure Authority (SWIA) approved for public review the Draft ARPA Stormwater Fund Entity Eligibility Requirements. On May 4, 2022, division staff posted for public comment the Proposed Plan to Administer American Rescue Plan Act's Funding for Stormwater Projects, which included the Draft ARPA Stormwater Fund Entity Eligibility Requirements, and the comment period ended at 5:00 p.m. on June 3, 2022.

Based on division staff's continued coordination with other divisions within the Department of Environmental Quality, other departments, and public comments received, staff proposed changes to the Draft ARPA Stormwater Fund Eligibility Requirements to the SWIA Stormwater Funding Committee at its meeting on June 23, 2022.

SWIA Stormwater Funding Committee June 23, 2022 Meeting

Staff proposed the following changes to the SWIA Stormwater Funding Committee on June 23, 2022:

Proposed Changes

Staff proposed the following changes to the ways in which an applicant may demonstrate "Significant Hardship Raising the Revenue ..." as required by NCGA Session Law 2021-180 Section 12.14.(d)(ii), for applications for Stormwater Construction Grants and Stormwater Planning Grants (except applications to Develop and Implement a New Stormwater Utility):

1. **Delete Original Criterion 1.** Original Criterion 1 currently reads: "The City or County has a Stormwater Enterprise Fund, and the operating ratio (total operating revenues divided by total operating expenses) in the most recent audit of this Enterprise Fund is less than 1.00."

Staff recognized that stormwater work can be funded from various sources, such as taxes, which would not be reflected in an operating ratio. In this context, the operating ratio may not be an indicator of hardship to generate revenue since that revenue may be provided from other sources. In addition, legislation requires that fees imposed "... may not exceed the city's cost of providing a stormwater management program ..." which means that an operating ratio could never exceed 1.00.

2. **Revise Original Criterion 2 and Renumber as Criterion 1.** Based on public comments received, staff propose to modify this eligibility criterion to include cities or counties that have a least one (1) of the five Local Government Unit (LGU) Indicators worse than the state benchmarks. This would increase the number of entities that could be eligible for these funds by 68, from approximately 536 to 604. Fifty (50) units of local government would not be eligible for ARPA stormwater funds under Revised Criterion 1.
3. **Revise Original Criterion 3 and Renumber as Criterion 2.** Staff propose minor wording changes to Revised Criterion 2 to clarify some of the requirements.

Revised Draft ARPA Stormwater Fund Entity Eligibility Requirements

Based on the above changes proposed by staff, the revised ARPA Stormwater Fund Eligibility Requirements would read as follows:

As defined in Session Law 2021-180 Section 12.14.(d), an eligible entity for a grant is “a city or county that (i) documents in a form and manner as the Department may specify a stormwater quality or quantity issue and (ii) demonstrates that it would experience a significant hardship raising the revenue necessary to finance stormwater management activities within its jurisdiction based on income and unemployment data, population trends, and any other data determined relevant by the Department. A regional council of government created pursuant to Part 2 of Article 20 of Chapter 160A of the General Statutes or a nonprofit entity is also an eligible entity under this section if the regional council of government or nonprofit entity partners with a city or county.” **These eligibility considerations apply to funding through the Local Assistance for Stormwater Infrastructure Investments fund; they do not apply to Clean Water State Revolving Fund (CWSRF) funding for stormwater projects.**

SWIA and the Division developed proposed eligibility requirements necessary to implement Session Law 2021-180 Section 12.14.(d). Eligibility is determined in two parts:

Part 1) Documentation of a Stormwater Quality or Quantity Issue – Required by Session Law 2021-180 Section 12.14.(d)(i)

For all stormwater grant applications, applicants will be required to provide:

- A. A narrative that describes the stormwater quality issue and/or stormwater quantity issue (based on historic or projected precipitation) and how the grant will be used to address the issue;
- B. A map and/or a narrative that identifies the location of the stormwater quality and/or stormwater quantity issue. The map and/or narrative must show or describe the watershed above the location, and if possible, identify the acreage, percentage of impervious area and land use cover in the watershed above the location; and
- C. If available, photographs of the stormwater quality and/or stormwater quantity issue and identification of the amount of rainfall that caused the issue, based on the nearest reliable rain gauge, news articles about the issue, or other information that clearly demonstrates the issue.

In addition, applicants must demonstrate that they meet Part 2, described below.

Part 2) Demonstration of “Significant Hardship Raising the Revenue ...” – Required by Session Law 2021-180 Section 12.14.(d)(ii)

The criteria that will be considered when making the determination of significant hardship raising the revenue necessary to finance stormwater management activities will vary by the type of stormwater grant application as follows.

I. For applications for Stormwater Construction Grants and Stormwater Planning Grants (except applications to Develop and Implement a New Stormwater Utility)

An applicant will demonstrate eligibility by meeting either any of the ~~two three~~ criteria below:

~~**Criterion 1: The City or County has a Stormwater Enterprise Fund, and the operating ratio (total operating revenues divided by total operating expenses) in the most recent audit of this Enterprise Fund is less than 1.00.**~~

OR

Criterion 1 2: At least **one two** of the five Local Government Unit (LGU) Indicators for the City or County are worse than the state benchmarks shown in the table below.

Local Government Unit Indicator		Spring 2022 State Benchmark (for reference only; benchmarks are updated annually)
Population Change	< =	4.26%
Poverty Rate	> =	14.7%
Median Household Income	< =	\$54,602
Unemployment Rate	> =	3.9%
Per Capita Appraised Value of Property	< =	\$119,594

OR

Criterion 2 3: The City or County as a whole does not meet Criterion 1 ~~or Criterion 2~~ but has stormwater projects that serve or benefit disadvantaged areas within the City’s or County’s jurisdiction. To be eligible, 75 percent or more of the project cost must be used to ~~serve or~~ benefit disadvantaged areas. Disadvantaged areas will be based on either:

- NC DEQ’s determination of “Potentially Underserved Block Groups” or Tribal boundaries displayed on the [NC DEQ Community Mapping System](#). Potentially Underserved Block Groups on the map include the following demographics: the share of nonwhites and Hispanic or Latino (of any race) is over fifty percent or at least ten percent higher than the County or State share, and the share of population experiencing poverty is over twenty percent or at least five percent higher than the County or State share. The applicant can use this map to demonstrate that the proposed project ~~serves or~~ benefits areas located within block groups classified on the map as Potentially Underserved Block Groups or within Tribal boundaries; or
- If the proposed project does not **benefit fall within** a Potentially Underserved Block Group or Tribal boundary layer on the map, the applicant must provide information in the application explaining ~~what the~~ factors ~~that~~ would qualify the **direct beneficiaries of the project area** as disadvantaged (such as demographic, historical, cultural, linguistic, low-wealth factors, or other considerations deemed relevant).

II. For applications to Develop and Implement a New Stormwater Utility

If the City or County does not have a stormwater utility with a Stormwater Enterprise Fund and the project purpose described in the application is to develop and implement a new Stormwater Utility, the City or County will have met the requirement to demonstrate that there is a significant hardship in raising the revenue necessary to finance stormwater management activities within its jurisdiction. The grant amount for which a City or County will be eligible will be capped at different levels based on the number of LGU Indicators (from Criterion **12**) that are worse than the state benchmarks.

Recommendation of the SWIA Stormwater Funding Committee

At its meeting on June 23, 2022, the SWIA Stormwater Funding Committee approved the revised Draft ARPA Stormwater Fund Entity Eligibility Requirements for presentation to SWIA at its July 13-14, 2022 meeting, and the Committee recommended that SWIA approve the revised Draft ARPA Stormwater Fund Entity Eligibility Requirements for use starting in the Fall 2022 funding application cycle.