

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 792*

Short Title: Water Infrastructure Authority/Water Grants. (Public)

Sponsors: Senators Hartsell and Clodfelter.

Referred to: Agriculture/Environment/Natural Resources.

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA WATER AND WASTEWATER
INFRASTRUCTURE AUTHORITY TO ADMINISTER THE STATE'S FUNDING FOR
WATER AND WASTEWATER INFRASTRUCTURE PROJECTS, TO TRANSFER THE
CONSTRUCTION GRANTS AND LOANS SECTION OF THE DIVISION OF WATER
QUALITY AND THE FINANCIAL SERVICES UNIT IN THE PUBLIC WATER
SUPPLY SECTION OF THE DIVISION OF ENVIRONMENTAL HEALTH FROM THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE
AUTHORITY, TO PROVIDE THAT THE CLEAN WATER MANAGEMENT TRUST
FUND SHALL NOT FUND WASTEWATER PROJECTS, TO TRANSFER ANNUALLY
THE SUM OF TWENTY-FIVE MILLION DOLLARS FROM THE CLEAN WATER
MANAGEMENT TRUST FUND TO THE WATER INFRASTRUCTURE FUND TO
PROVIDE GRANT AND LOAN FUNDS FOR WATER AND WASTEWATER
INFRASTRUCTURE PROJECTS, TO DIRECT THE AUTHORITY AND THE NORTH
CAROLINA ECONOMIC DEVELOPMENT CENTER TO DEVELOP A TRANSITION
PLAN TO MOVE THE WATER AND WASTEWATER PROGRAMS FROM THE
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER TO THE
AUTHORITY, AND TO MAKE CONFORMING STATUTORY CHANGES AS
RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION
OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 159G is amended by adding a new Article to read:

"Article 5.

"North Carolina Water and Wastewater Infrastructure Authority.

"§ 159G-70. Definitions.

The following definitions apply in this Article:

- (1) Authority. – The North Carolina Water and Wastewater Infrastructure Authority established by G.S. 159G-70.
- (2) Commission. – State Water Infrastructure Commission.
- (3) Strategic plan. – The statewide strategic plan for the State's water and wastewater infrastructure developed by the State Water Infrastructure Commission.

"§ 159G-71. North Carolina Water and Wastewater Infrastructure Authority.

(a) Established. – The North Carolina Water and Wastewater Infrastructure Authority is established as an independent authority. The Authority is located in the Department of Environment and Natural Resources for administrative purposes.



1 **(b) Membership.** – The Authority shall consist of 12 members to be appointed as
2 follows:

3 **(1)** Four members appointed by the Governor.

4 **(2)** Four members appointed by the President Pro Tempore of the Senate.

5 **(3)** Four members appointed by the Speaker of the House of Representatives.

6 **(c) Initial Appointments; Term Limits.** – To provide for a staggered membership, two
7 of the members initially appointed pursuant to subdivisions (b)(1), (b)(2), and (b)(3) of this
8 section shall serve two-year terms ending on June 30, 2012. When appointing the initial
9 members, the Governor, President Pro Tempore of the Senate, and Speaker of the House of
10 Representatives shall designate which initial members shall serve two-year terms and which
11 shall serve four-year terms.

12 **(d) Terms.** – Except as provided for the initial members under subsection (c) of this
13 section, members shall serve four-year terms beginning July 1, 2010. No member shall serve
14 more than two full consecutive four-year terms or a total of 10 years. Members may continue to
15 serve beyond their terms until their successors are duly appointed, but any holdover shall not
16 affect the expiration date of the succeeding term. A member may be removed from the
17 Authority for cause by the official that appointed the member.

18 **(e) Qualifications.** – The office of Authority member is declared to be an office that
19 may be held concurrently with any other executive or appointive office, under the authority of
20 Article VI, Section 9, of the North Carolina Constitution. Persons shall be appointed to the
21 Authority based on their knowledge and expertise of funding and construction of water and
22 wastewater infrastructure.

23 **(f) Chair.** – The Governor shall appoint the initial chair of the Authority. The chair
24 appointed by the Governor shall call the first meeting, at which the members shall elect a chair.
25 The chair shall serve a term of one year. The Authority shall elect a chair annually.

26 **(g) Meetings.** – The Authority shall meet at least four times a year and may meet as
27 often as needed.

28 **(h) Quorum.** – A majority of the membership of the Authority constitutes a quorum for
29 the transaction of business.

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

34 **(j) Compensation.** – Each member of the Authority shall receive per diem and
35 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per
36 diem, subsistence, and travel expenses of the Authority members shall be paid from funds made
37 available to the Authority through grants, appropriations, or any other sources.

38 **(k) Meeting Facilities.** – The Secretary of Environment and Natural Resources shall
39 provide meeting facilities for the Authority and its staff as requested by the chair.

40 **"§ 159G-72. Authority: purpose; duties.**

41 **(a) Purpose.** – The purpose of the Authority is to administer the State's funding for
42 water and wastewater infrastructure projects.

43 **(b) Duties.** – The Authority shall have the following duties:

44 **(1)** To award grants and loans for water and wastewater systems and to system
45 operators using a single application and project award process while
46 maintaining distinct funding priorities (i.e. public health, pollution control,
47 economic development).

48 **(2)** To implement and maintain the strategic plan for the State's water and
49 wastewater infrastructure developed by the Commission after that plan is
50 approved by the General Assembly.

- 1 (3) To develop and track performance measures to indicate how the Authority is
2 meeting the goals established by the strategic plan.
- 3 (4) To maintain the baseline inventory of water and wastewater infrastructure in
4 North Carolina developed by the Commission.
- 5 (5) To develop and maintain an integrated database designed to provide ad hoc
6 reporting capabilities based on performance measures identified by the
7 strategic plan.
- 8 (6) To conduct a detailed needs assessment to determine water and wastewater
9 infrastructure funding needs using the information provided by the
10 Commission.

11 **"§ 159G-73. Authority: reporting requirement.**

12 The chair of the Authority shall report each year by January 1 to the Joint Legislative
13 Commission on Governmental Operations, the Environmental Review Commission, the
14 Subcommittees on Natural and Economic Resources of the House of Representatives and
15 Senate Appropriations Committees, and the Fiscal Research Division of the General Assembly
16 regarding the implementation of its duties under G.S.159G-72. The report shall include an
17 update on the initial implementation of the strategic plan and, after implementation, upon the
18 progress maintaining the strategic plan. The report shall also include a list of the projects
19 awarded grants or loans, a description of the project, the amount of the grant or loan awarded
20 for the project, the total cost of the project, and shall incorporate any additional information
21 outlined in G.S. 159G-26(b) that is available and appropriate for inclusion in the report.

22 **"§ 159G-74. Authority: Executive Director and staff.**

23 The Authority, as soon as practicable after its organization, shall select and appoint a
24 competent person in accordance with this section as Executive Director of the Authority. The
25 Executive Director shall be charged with the supervision of all activities under the jurisdiction
26 of the Authority and shall serve as the chief administrative officer of the Authority. Subject to
27 the approval of the Authority and the Director of the Budget, the Executive Director may
28 employ such clerical and other assistants as may be deemed necessary.

29 The person selected as Executive Director shall have had training and experience in funding
30 and construction of water and wastewater infrastructure. The salary of the Executive Director
31 shall be fixed by the Authority, and the Executive Director shall be allowed travel and
32 subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary and
33 expenses shall be paid from funds made available to the Authority through grants,
34 appropriations, or any other sources. The term of office of the Executive Director shall be at the
35 pleasure of the Authority.

36 **"§ 159G-75. Cooperation among State agencies and other entities funding State strategic**
37 **water plan.**

38 Any State agency or other entity that receives State or federal funds for the purpose of
39 funding State water or wastewater infrastructure shall cooperate with the Authority in using and
40 disbursing those funds pursuant to the strategic plan. The Department of Commerce shall notify
41 the Authority of grants and loan guarantees that it awards pursuant to G.S. 143B-431(d) for
42 water and wastewater infrastructure under the Community Development Block Grant program
43 and of funds provided for water and wastewater infrastructure projects from the Industrial
44 Development Fund established in G.S. 143B-437.02. The Department of Commerce shall
45 provide information regarding those grants, loan guarantees, and projects as requested by the
46 Authority and shall cooperate with the Authority to provide that those funds are used and
47 disbursed pursuant to the strategic plan."

48 **SECTION 2.** G.S. 113A-252 reads as rewritten:

49 **"§ 113A-252. Definitions.**

50 The following definitions apply in this Article:

- 1 (1) Council. – The advisory council for the Clean Water Management Trust
2 Fund.
- 3 (2) Economically distressed local government unit. – An economically
4 distressed county, as defined in G.S. 143B-437.01, or a local government
5 unit located in that county.
- 6 (3) Fund. – The Clean Water Management Trust Fund created pursuant to this
7 Article.
- 8 (4) Land. – Real property and any interest in, easement in, or restriction on real
9 property.
- 10 (4a) Local government unit. – Defined in G.S. 159G-20.
- 11 (4b) Stormwater quality project. – Defined in G.S. 159G-20.
- 12 (5) Trustees. – The trustees of the Clean Water Management Trust Fund.
- 13 ~~(6) Wastewater collection system. – Defined in G.S. 159G-20.~~
- 14 ~~(7) Wastewater treatment works. – Defined in G.S. 159G-20."~~

15 **SECTION 3.** G.S. 113A-253(c) reads as rewritten:

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

- 19 (1) To acquire land for riparian buffers for the purposes of providing
20 environmental protection for surface waters and urban drinking water
21 supplies and establishing a network of riparian greenways for environmental,
22 educational, and recreational uses and to retire debt incurred for this purpose
23 under Article 9 of Chapter 142 of the General Statutes.
- 24 (2) To acquire conservation easements or other interests in real property for the
25 purpose of protecting and conserving surface waters and urban drinking
26 water supplies and to retire debt incurred for this purpose under Article 9 of
27 Chapter 142 of the General Statutes.
- 28 (3) To coordinate with other public programs involved with lands adjoining
29 water bodies to gain the most public benefit while protecting and improving
30 water quality and to retire debt incurred for this purpose under Article 9 of
31 Chapter 142 of the General Statutes.
- 32 (4) To restore previously degraded lands to reestablish their ability to protect
33 water quality and to retire debt incurred for this purpose under Article 9 of
34 Chapter 142 of the General Statutes.
- 35 ~~(5) To repair failing wastewater collection systems and wastewater treatment
36 works if the repair is a reasonable remedy for resolving an existing waste
37 treatment problem and the repair is not for the purpose of expanding the
38 system to accommodate future anticipated growth of a community.~~
- 39 ~~(6) To repair and eliminate failing septic tank systems, to eliminate illegal
40 drainage connections, and to expand a wastewater collection system or
41 wastewater treatment works if the expansion eliminates failing septic tank
42 systems or illegal drainage connections.~~
- 43 (7) To finance stormwater quality projects.
- 44 (8) To facilitate planning that targets reductions in surface water pollution.
- 45 (8a) To finance innovative efforts, including pilot projects, to improve
46 stormwater management, to reduce pollutants entering the State's waterways,
47 to improve water quality, and to research alternative solutions to the State's
48 water quality problems.
- 49 (9) To fund operating expenses of the Board of Trustees and its staff."

50 **SECTION 4.** G.S. 113A-253.1(a) reads as rewritten:

1 "(a) The General Assembly finds that, due to the critical need in this State to clean up
2 pollution in the State's surface waters and to protect and conserve those waters that are not yet
3 polluted, it is imperative that the State provide a minimum of one hundred million dollars
4 (\$100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore,
5 there is annually appropriated from the General Fund to the Clean Water Management Trust
6 Fund the sum of one hundred million dollars (\$100,000,000). Of the funds appropriated by this
7 section, the sum of twenty-five million dollars (\$25,000,000) shall annually be transferred to
8 the Water Infrastructure Fund established in G.S. 159G-22 to be used in accordance with
9 Chapter 159G of the General Statutes."

10 **SECTION 5.** G.S. 113A-254 reads as rewritten:

11 **"§ 113A-254. Grant requirements.**

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

14 (1) A State agency.

15 (2) A local government unit.

16 (3) A nonprofit corporation whose primary purpose is the conservation,
17 preservation, and restoration of our State's environmental and natural
18 resources.

19 (a1) Criteria. – The criteria developed by the Trustees under G.S. 113A-256 apply to
20 grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and
21 the criteria set out in this section also apply to ~~wastewater collection system projects,~~
22 ~~wastewater treatment works projects, and stormwater quality projects. An application for a~~
23 ~~wastewater collection system project or a wastewater treatment works project that serves an~~
24 ~~economically distressed local government unit has priority.~~

25 (b) Matching Requirement. – The Board of Trustees shall establish matching
26 requirements for grants awarded under this Article. This requirement may be satisfied by the
27 donation of land to a public or private nonprofit conservation organization as approved by the
28 Board of Trustees. The Board of Trustees may also waive the requirement to match a grant
29 pursuant to guidelines adopted by the Board of Trustees.

30 (c) Restriction. – No grant shall be awarded under this article to satisfy compensatory
31 mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

32 (d) ~~Wastewater Limits.~~—A ~~wastewater collection system project or a wastewater~~
33 ~~treatment works project is eligible for a grant under this Article only if it is a high unit cost~~
34 ~~project, as defined in G.S. 159G-20. A planning grant or a technical assistance grant for a~~
35 ~~regional wastewater collection system or a regional wastewater treatment works is not subject~~
36 ~~to the high unit cost threshold. A grant made under this Article for a wastewater collection~~
37 ~~system project or a wastewater treatment works project is subject to the cost limits and~~
38 ~~recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.~~

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

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

49 **SECTION 6.** The Construction Grants and Loans Section of the Division of Water
50 Quality and the Financial Services Unit in the Public Water Supply Section of the Division of
51 Environmental Health are transferred from the Department of Environment and Natural

1 Resources to the North Carolina Water and Wastewater Infrastructure Authority established in
2 G.S. 159G-71. This transfer shall have all of the elements of a Type I transfer, as defined in
3 G.S. 143A-6.

4 **SECTION 7.** The North Carolina Water and Wastewater Infrastructure Authority
5 and the North Carolina Rural Economic Development Center shall cooperatively develop a
6 transition plan to transfer the Clean Water Partners Program and the water and wastewater
7 portion of the Economic Infrastructure Program that is currently operated by the North Carolina
8 Rural Economic Development Center and the unencumbered funds for those programs to the
9 North Carolina Water and Wastewater Infrastructure Authority. The plan shall provide for the
10 transition to be complete by July 1, 2010, and shall also provide for the continued monitoring
11 and funding of projects that have been awarded grants from the North Carolina Rural Economic
12 Development Center before July 1, 2010.

13 **SECTION 8.** G.S. 159G-20 reads as rewritten:

14 **"§ 159G-20. Definitions.**

15 The following definitions apply in this Chapter:

16 (1) Authority. – North Carolina Water and Wastewater Infrastructure Authority
17 established under G.S. 159G-71.

18 ~~(4)~~(1a) Construction costs. – The costs of planning, designing, and constructing a
19 project for which a loan or grant is available under this Chapter. The term
20 includes the following:

- 21 a. Excess or reserve capacity costs attributable to no more than 20-year
22 projected domestic growth plus ten percent (10%) unspecified
23 industrial growth.
- 24 b. Legal, fiscal, administrative, and contingency costs.
- 25 c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a
26 project.
- 27 d. A fee payable to the ~~Department~~ Authority for a permit to implement
28 a project for which a loan or grant is obtained.
- 29 e. The cost to acquire real property or an interest in real property.

30 (2) CWSRF. – The Clean Water State Revolving Fund established in
31 G.S. 159G-22 as an account in the Water Infrastructure Fund.

32 (3) Department. – The Department of Environment and Natural Resources.

33 ~~(4) Division of Environmental Health. – The Division of Environmental Health~~
34 ~~of the Department of Environment and Natural Resources.~~

35 ~~(5) Division of Water Quality. – The Division of Water Quality of the~~
36 ~~Department of Environment and Natural Resources.~~

37 (6) Drinking Water Reserve. – The Drinking Water Reserve established in
38 G.S. 159G-22 as an account in the Water Infrastructure Fund.

39 (7) DWSRF. – The Drinking Water State Revolving Fund established in
40 G.S. 159G-22 as an account in the Water Infrastructure Fund.

41 (8) Grant. – A sum of money given to an applicant without any obligation on the
42 part of the applicant to repay the sum.

43 (9) High-unit-cost project. – A project that results in an estimated average
44 household user fee for water and sewer service in the area served by the
45 project in excess of the high-unit-cost threshold. The average household user
46 fee is calculated for a continuous 12-month period.

47 (10) High-unit-cost threshold. – Either of the following amounts determined on
48 the basis of data from the most recent federal decennial census and updated
49 by the U.S. Department of Housing and Urban Development's annual
50 estimated income adjustment factors:

- 1 a. One and one-half percent (1.5%) of the median household income in
2 an area that receives both water and sewer service.
- 3 b. Three-fourths of one percent ($\frac{3}{4}\%$) of the median household income
4 in an area that receives only water service or only sewer service.
- 5 (11) Loan. – A sum of money loaned to an applicant with an obligation on the
6 part of the applicant to repay the sum.
- 7 (12) Local Government Commission. – The Local Government Commission of
8 the Department of the State Treasurer, established in G.S. 159-3.
- 9 (13) Local government unit. – Any of the following:
- 10 a. A city as defined in G.S. 160A-1.
- 11 b. A county.
- 12 c. A consolidated city-county as defined in G.S. 160B-2.
- 13 d. A county water and sewer district created pursuant to Article 6 of
14 Chapter 162A of the General Statutes.
- 15 e. A metropolitan sewerage district or a metropolitan water district
16 created pursuant to Article 4 of Chapter 162A of the General
17 Statutes.
- 18 f. A water and sewer authority created under Article 1 of Chapter 162A
19 of the General Statutes.
- 20 g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter
21 130A of the General Statutes.
- 22 h. A joint agency created pursuant to Part 1 of Article 20 of Chapter
23 160A of the General Statutes.
- 24 i. A joint agency that was created by agreement between two cities and
25 towns to operate an airport pursuant to G.S. 63-56 and that provided
26 drinking water and wastewater services off the airport premises
27 before 1 January 1995.
- 28 (14) Nonprofit water corporation. – A nonprofit corporation that is incorporated
29 under Chapter 55A of the General Statutes solely for the purpose of
30 providing drinking water or wastewater services and is an eligible applicant
31 for a federal loan or grant from the Rural Utility Services Division, U.S.
32 Department of Agriculture.
- 33 (15) Public water system. – Defined in G.S. 130A-313.
- 34 (16) Reserved.
- 35 (17) Reserved.
- 36 ~~(18) Secretary. – The Secretary of Environment and Natural Resources.~~
- 37 (19) State. – The State of North Carolina.
- 38 (20) Stormwater quality project. – A project whose primary purpose is to prevent
39 or remove pollution from stormwater rather than collect, store, or convey
40 stormwater for drainage or flood control purposes.
- 41 (21) Targeted interest rate project. – Either of the following types of projects:
- 42 a. A high-unit-cost project that is awarded a loan.
- 43 b. A project that is awarded a loan from the CWSRF or the DWSRF
44 and is in a category for which federal law encourages a special focus.
- 45 (22) Treasurer. – The Treasurer of the State elected pursuant to Article III,
46 Section 7, of the Constitution.
- 47 (23) Wastewater collection system. – A unified system of pipes, conduits,
48 pumping stations, force mains, and appurtenances for collecting and
49 transmitting water-carried human wastes and other wastewater from
50 residences, industrial establishments, or any other buildings.

- 1 (24) Wastewater Reserve. – The Wastewater Reserve established in
2 G.S. 159G-22 as an account in the Water Infrastructure Fund.
- 3 (25) Wastewater system. – A wastewater collection system, wastewater treatment
4 works, stormwater quality project, or nonpoint source pollution project.
- 5 (26) Wastewater treatment works. – The various facilities and devices used in the
6 treatment of sewage, industrial waste, or other wastes of a liquid nature,
7 including the necessary interceptor sewers, outfall sewers, nutrient removal
8 equipment, pumping equipment, power and other equipment, and their
9 appurtenances.
- 10 (27) Water Infrastructure Fund. – The fund established in G.S. 159G-22."

11 **SECTION 9.** G.S. 159G-21 reads as rewritten:

12 **"§ 159G-21. Revenue for water projects.**

13 This Chapter governs the use of the following revenue:

- 14 (1) Revenue appropriated to the Department for the Authority to use to match
15 federal funds received for loans and grants for wastewater and drinking
16 water projects and revenue received by the ~~Department~~ Authority from the
17 repayment of loans made with the use of the federal funds.
- 18 (2) Revenue appropriated to the Department for the Authority to use to provide
19 a source of State funds to make loans and grants for wastewater and drinking
20 water projects and revenue received by the ~~Department~~ Authority from the
21 repayment of loans made with the use of these funds."

22 **SECTION 10.** G.S. 159G-22 reads as rewritten:

23 **"§ 159G-22. Water Infrastructure Fund.**

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

33 (b) CWSRF. – The Clean Water State Revolving Fund is established as an account
34 within the Water Infrastructure Fund. The account receives federal funds for wastewater
35 projects and the State funds required to match the federal funds. The account is established
36 under and must be managed in accordance with Title VI of the Federal Water Quality Act of
37 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution
38 Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these
39 federal acts and the federal regulations adopted to implement the acts. Revenue credited to the
40 account is available in perpetuity and must be used only to provide construction loans and other
41 assistance allowed under federal law. Grants are available from this account only to the extent
42 allowed under federal law.

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

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

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

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

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

18 **SECTION 11.** G.S. 159G-23 reads as rewritten:

19 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking**
20 **Water Reserve.**

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

25 (1) Public necessity. – An applicant must explain how the project promotes
26 public health and protects the environment. A project that improves a system
27 that is not in compliance with permit requirements or is under orders from
28 the Department, enables a moratorium to be lifted, or replaces failing septic
29 tanks with a wastewater collection system has priority.

30 (2) Effect on impaired waters. – A project that improves designated impaired
31 waters of the State has priority.

32 (3) Efficiency. – A project that achieves efficiencies in meeting the State's water
33 infrastructure needs or reduces vulnerability to drought consistent with Part
34 2A of Article 21 of Chapter 143 of the General Statutes by one of the
35 following methods has priority:

36 a. The combination of two or more wastewater or public water systems
37 into a regional wastewater or public water system by merger,
38 consolidation, or another means.

39 b. Conservation or reuse of water, including bulk water reuse facilities
40 and waterlines to supply reuse water for irrigation and other
41 approved uses.

42 c. Construction of an interconnection between water systems intended
43 for use in drought or other water shortage emergency.

44 d. Repair or replacement of leaking waterlines.

45 e. Replacement of meters and installation of new metering systems.

46 (4) Comprehensive land-use plan. – A project that is located in a city or county
47 that has adopted or has taken significant steps to adopt a comprehensive
48 land-use plan under Article 18 of Chapter 153A of the General Statutes or
49 Article 19 of Chapter 160A of the General Statutes has priority over a
50 project located in a city or county that has not adopted a plan or has not
51 taken steps to do so. The existence of a plan has more priority than steps

1 taken to adopt a plan, such as adoption of a zoning ordinance. A plan that
2 exceeds the minimum State standards for protection of water resources has
3 more priority than one that does not. A project is considered to be located in
4 a city or county if it is located in whole or in part in that unit. A land-use
5 plan is not considered a comprehensive land-use plan unless it has
6 provisions that protect existing water uses and ensure compliance with water
7 quality standards and classifications in all waters of the State affected by the
8 plan.

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

35 **SECTION 12.** G.S. 159G-24(b) reads as rewritten:

36 "(b) Departmental Receipt. – The fee on a loan from the Wastewater Reserve or the
37 Drinking Water Reserve is a departmental receipt and must be applied to the
38 ~~Department's Authority's~~ and the Local Government Commission's costs in administering loans
39 from these Reserves. The ~~Department Authority~~ and the Local Government Commission must
40 determine how to allocate the fee receipts between their agencies. The fee on a grant from the
41 Wastewater Reserve or the Drinking Water Reserve is a departmental receipt of the ~~Department~~
42 ~~Authority~~ and must be applied to the ~~Department's Authority's~~ costs in administering grants
43 from these Reserves."

44 **SECTION 13.** G.S. 159G-25 reads as rewritten:

45 "**§ 159G-25. Expenditure for emergency corrective action at a wastewater treatment**
46 **works.**

47 (a) The ~~Department Authority~~ may use revenue in any account of the Wastewater
48 Reserve to provide funds for emergency corrective action at a wastewater treatment works
49 under the circumstances set out in this section. The amount expended in a fiscal year for
50 corrective action under this section may not exceed two hundred thousand dollars (\$200,000).

1 An expenditure for emergency corrective action is authorized only under the following
2 circumstances:

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

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

21 **SECTION 14.** G.S. 159G-26(a) reads as rewritten:

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

28 **SECTION 15.** G.S. 159G-30 reads as rewritten:

29 "**§ 159G-30. ~~Department's Authority's~~ responsibility.**

30 The ~~Department Authority~~ administers loans and grants made from the CWSRF, the
31 DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. ~~The Division of Water~~
32 ~~Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The~~
33 ~~Division of Environmental Health administers loans and grants from the DWSRF and the~~
34 ~~Drinking Water Reserve."~~

35 **SECTION 16.** G.S. 159G-32 reads as rewritten:

36 "**§ 159G-32. Projects eligible for loan or grant.**

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

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

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

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

48 **SECTION 17.** G.S. 159G-33 reads as rewritten:

49 "**§ 159G-33. Loans and grants available from Wastewater Reserve.**

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

4 (1) General. – A loan or grant is available for a project authorized in
5 G.S. 159G-32(b).

6 (2) High-unit-cost grant. – A high-unit-cost grant is available for the portion of
7 the construction costs of a wastewater collection system project or a
8 wastewater treatment works project that results in an estimated average
9 household user fee for water and sewer service in the area served by the
10 project that exceeds the high-unit-cost threshold.

11 (3) Technical assistance grant. – A technical assistance grant is available to
12 determine the best way to correct the deficiencies in a wastewater collection
13 system or wastewater treatment works that either is not in compliance with
14 its permit limits or, as identified in the most recent inspection report by the
15 ~~Department~~Authority under G.S. 143-215.3, is experiencing operational
16 problems and is at risk of violating its permit limits.

17 (4) Emergency loan. – An emergency loan is available in the event the Secretary
18 certifies that a serious public health hazard related to the inadequacy of an
19 existing wastewater collection system or wastewater treatment works is
20 present or imminent in a community.

21 (b) Interaccount Transfer. – The ~~Secretary~~chair of the Authority may use revenue in
22 any account in the Wastewater Reserve to provide funds for an emergency loan."

23 **SECTION 18.** G.S. 159G-34 reads as rewritten:

24 **"§ 159G-34. Loans and grants available from Drinking Water Reserve.**

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

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

30 (2) High-unit-cost grant. – A grant is available for the portion of the
31 construction costs of a public water system project that results in an
32 estimated average household user fee for water and sewer service in the area
33 served by the project that exceeds the high-unit-cost threshold.

34 (3) Technical assistance grant. – A technical assistance grant is available to
35 determine the best way to correct the deficiencies in a public water system
36 that does not comply with State law or the rules adopted to implement that
37 law.

38 (4) Emergency loan. – An emergency loan is available to an applicant in the
39 event the Secretary certifies that either a serious public health hazard or a
40 drought emergency related to the water supply system is present or imminent
41 in a community.

42 (b) Interaccount Transfer. – The ~~Secretary~~chair of the Authority may use revenue in
43 any account in the Drinking Water Reserve to provide funds for an emergency loan."

44 **SECTION 19.** G.S. 159G-35 reads as rewritten:

45 **"§ 159G-35. Criteria for loans and grants.**

46 (a) CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or
47 grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts
48 must meet the criteria set under federal law. The ~~Department~~Authority is directed to establish
49 through negotiation with the United States Environmental Protection Agency the criteria for
50 evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority
51 assigned to the criteria. The ~~Department~~Authority must incorporate the negotiated criteria and

1 priorities in the Capitalization Grant Operating Agreement between the ~~Department Authority~~
2 and the United States Environmental Protection Agency. The criteria and priorities
3 incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The
4 common criteria in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the
5 DWSRF.

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

10 **SECTION 20.** G.S. 159G-37 reads as rewritten:

11 "**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water**
12 **Reserve.**

13 An application for a loan or grant from the CWSRF or the Wastewater Reserve must be
14 filed with the ~~Division of Water Quality of the Department Authority.~~ An application for a
15 loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the ~~Division~~
16 ~~of Environmental Health of the Department Authority.~~ An application must be submitted on a
17 form prescribed by the ~~Division Authority~~ and must contain the information required by the
18 ~~Division Authority.~~ An applicant must submit to the ~~Division Authority~~ any additional
19 information requested by the ~~Division Authority~~ to enable the ~~Division Authority~~ to make a
20 determination on the application. An application that does not contain information required on
21 the application or requested by the ~~Division Authority~~ is incomplete and is not eligible for
22 consideration. An applicant may submit an application in as many categories as it is eligible for
23 consideration under this Article."

24 **SECTION 21.** G.S. 159G-38 reads as rewritten:

25 "**§ 159G-38. Environmental assessment and public hearing.**

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

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

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

1 written requests for a hearing on an application as part of the records pertaining to the
2 application."

3 **SECTION 22.** G.S. 159G-39 reads as rewritten:

4 "**§ 159G-39. Review of applications and award of loan or grant.**

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

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

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

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

29 **SECTION 23.** G.S. 159G-40 reads as rewritten:

30 "**§ 159G-40. Terms of loan and execution of loan documents.**

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

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

42 (1) Interest rate. – The interest rate for a loan may not exceed the lesser of four
43 percent (4%) or one half the prevailing national market rate for tax-exempt
44 general obligation debt of similar maturities derived from a published
45 indicator. When recommended by the ~~Department Authority~~, the Local
46 Government Commission may set an interest rate for a loan for a targeted
47 interest rate project at a rate that is lower than the standard rate to achieve
48 the purpose of the target.

49 (2) Maturity. – The maximum maturity for a loan for a project that is not a
50 high-unit-cost project may not exceed 20 years or the project's expected life,

1 whichever is shorter. The maximum maturity for a loan for a high-unit-cost
2 project is 30 years or the project's expected life, whichever is shorter.
3 (c) Security for Loan. – A local government unit may pledge any of the following,
4 alone or in combination, as security for an obligation to repay the principal of and interest on a
5 loan awarded under this Article:

- 6 (1) User fee revenues derived from operation of the wastewater system or public
7 water system that benefits from the project for which the loan is awarded.
- 8 (2) A mortgage, deed of trust, security interest, or similar lien on part or all of
9 the real and personal property comprising the wastewater system or public
10 water system that benefits from the project for which the loan is awarded.
- 11 (3) Its full faith and credit if it meets the requirements of Article 4 of Chapter
12 159 of the General Statutes.
- 13 (4) Nontax revenue not included in subdivision (1) of this subsection.

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

21 **SECTION 24.** G.S. 159G-41 reads as rewritten:

22 "**§ 159G-41. Withdrawal of loan or grant.**

23 A letter of intent to offer an award for a loan or grant for a project is withdrawn if the
24 applicant fails to enter into a construction contract for the project within two years after the date
25 of the letter, unless the ~~Department Authority~~ finds that the applicant has good cause for the
26 failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into
27 a construction contract for the project within one year after the date of the award, unless the
28 ~~Department Authority~~ finds that the applicant has good cause for the failure. If the ~~Department~~
29 ~~Authority~~ finds good cause for an applicant's failure, the ~~Department Authority~~ must set a date
30 by which the applicant must take action or forfeit the loan or grant."

31 **SECTION 25.** G.S. 159G-42 reads as rewritten:

32 "**§ 159G-42. Disbursement of loan or grant.**

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

37 **SECTION 26.** G.S. 159G-43 reads as rewritten:

38 "**§ 159G-43. Inspection of project.**

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

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

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

51 **SECTION 27.** G.S. 159G-44 reads as rewritten:

1 "§ 159G-44. Rules.

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

7 **SECTION 28.** Article 4 of Chapter 159G of the General Statutes is repealed.

8 **SECTION 29.** This act becomes effective July 1, 2010.