

## **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**§§ 159G-1 through 159G-18: Repealed by Session Laws 2005-454, s. 2, effective January 1, 2006.**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) **Affordability.** – The relative affordability of a project for a community compared to other communities in North Carolina based on factors that shall include, at a minimum, water and sewer service rates, median household income, poverty rates, employment rates, the population of the served community, and past expenditures by the community on water infrastructure compared to that community's capacity for financing of water infrastructure improvements.
- (1a) **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.
- (1b) **Authority.** – The State Water Infrastructure Authority created and established pursuant to Article 5 of this Chapter.
- (1c) **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 Environmental Quality.
- (4) **Repealed by Session Laws 2011-145, s. 13.3(ggg), effective July 1, 2011.**
- (4a) **Distressed unit.** – A public water system or wastewater system operated by a local government unit exhibiting signs of failure to identify or address those financial or operating needs necessary to enable that system to become or to remain a local government unit generating sufficient revenues to adequately

- fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
- (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), (10) Repealed by Session Laws 2015-241, s. 14.13(b), effective July 1, 2015.
  - (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. Any of the following entities created pursuant to Chapter 162A of the General Statutes:
      - 1. A water and sewer authority created pursuant to Article 1.
      - 2. A metropolitan water district created pursuant to Article 4.
      - 3. A metropolitan sewerage district created pursuant to Article 5.
      - 4. A metropolitan water and sewerage district created pursuant to Article 5A.
      - 5. A county water and sewer district created pursuant to Article 6.
    - e., f. Repealed by Session Laws 2020-79, s. 1(a), effective July 1, 2020.
    - 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 or Part 5 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.
  - (13a) Merger. – The consolidation of two or more water and/or sewer systems into one system with common ownership, management, and operation.
  - (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.
- (14a) Operating deficit. – The shortage between revenues plus available reserves and operating expenditures, including capital expenditures, necessary to maintain operations in a distressed unit.
  - (15) Public water system. – Defined in G.S. 130A-313.
  - (16) Regionalization. – The physical interconnecting of an eligible entity's wastewater system to another entity's wastewater system for the purposes of providing regional treatment or the physical interconnecting of an eligible entity's public water system to another entity's water system for the purposes of providing regional water supply.
  - (17) Reserved.
  - (18) Secretary. – The Secretary of Environmental Quality.
  - (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 project that is awarded a loan from the Drinking Water Reserve or the Wastewater Reserve based on affordability.
    - 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.
  - (22a) Viable Utility Reserve. – The Viable Utility Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
  - (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); 2014-115, s. 17; 2015-241, ss. 14.13(a), (b), 14.30(u), (v); 2019-241, s. 11(d); 2020-79, ss. 1(a), 6(a).)

**§ 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.

(h) Viable Utility Reserve. – The Viable Utility Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive appropriated State funds to be used for grants to local government units for those purposes authorized under this Article. Revenue credited to the Viable Utility Reserve is neither received from the federal government nor provided as a match for federal funds.

(i) Viable Utility Accounts. – The Department is directed to establish accounts within the Viable Utility Reserve to administer grants for public water systems or wastewater systems owned by local government units.

(j) Unused CWSRF and DWSRF State Match. – Funds appropriated to the Department for the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund to provide State matching funds that are in excess of the amount required to draw down all available federal capitalization grant funds may also be used for water and wastewater infrastructure grants awarded from the Wastewater Reserve, the Drinking Water Reserve, or the Viable Utility Reserve. (2005-454, s. 3; 2020-79, s. 1(b); 2021-180, s. 12.12(a).)

### **§ 159G-23. Priority consideration for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The considerations for priority in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Infrastructure must consider the following items when evaluating applications:

- (1) Public necessity. – A project that promotes public health and protects the environment, 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.
- (2) Effect on impaired waters. – A project that improves designated impaired waters of the State, with greater priority given to projects that improve designated impaired waters of the State that serve as a public water supply for a large public water system. For purposes of this subdivision, a large public water system is one serving more than 175,000 service connections.
- (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:
  - 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 Chapter 160D of the General Statutes. 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 higher 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. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has higher 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 equal consideration 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.
- (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.
- (7) Capital improvement plan. – A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages, so long as the capital improvement plan sets 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. If no part of the service area of a project is located within a county subject to that Plan, the project has equal priority under this subdivision with a project that receives priority under this subdivision.

- (9) Affordability. – The relative affordability of a project for a community compared to other communities in North Carolina.
- (10) Merger and 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. 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 under this subdivision as a project that includes regionalization.
- (11) Improve regional coordination. – A project that addresses a potential conflict between local plans or implements a measure in which local water supply plans could be better coordinated.
- (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.
- (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.
- (14) Disproportionate burden to protect water supply of higher-wealth neighboring local government unit. – Wastewater system improvements made by a local government unit in order to protect or preserve the water supply of a neighboring local government unit that has a lower poverty rate, lower utility bills, higher population growth, higher median household incomes, and lower unemployment. (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); 2014-115, s. 17; 2015-241, s. 14.13(c); 2021-117, s. 4(a); 2022-62, s. 43.)

**§ 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-25.5:** Repealed by Session Laws 2019-241, s. 11(a), effective November 6, 2019.

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

(a) Requirement. – The Department shall publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Infrastructure. The report shall be published by November 1 of each year and cover the preceding fiscal year. The Department shall make the report available to the public and shall give a copy of the report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division with the report required by G.S. 159G-72 as a single report.

(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); 2014-115, s. 17; 2017-10, s. 4.17(a).)

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



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

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