

## Article 2.

### Water Infrastructure Loans and Grants Administered by Department.

#### **§ 159G-30. Department's responsibility.**

The Department, through the Division, administers the following:

- (1) Loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve.
- (2) The award of funds by the Authority from the Community Development Block Grant program to local government units for infrastructure projects.
- (3) Grants made from the Viable Utility Reserve. (2005-454, s. 3; 2011-145, s. 13.3(jjj); 2013-360, s. 14.21(g); 2013-413, s. 57(t); 2014-115, s. 17; 2015-241, s. 14.13(c1); 2020-79, s. 1(c).)

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

(a) 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.

(b) Entities eligible in subsection (a) of this section for grants from the Wastewater Reserve and the Drinking Water Reserve may be limited, based on affordability, to a portion of the total construction costs for the project types defined in G.S. 159G-33(a)(2) and G.S. 159G-34(a)(2).

(c) To the extent that funds are available, loans shall be considered for the portion of construction costs not eligible for grant funding.

(d) A local government unit is eligible to apply for a grant from the Viable Utility Reserve.

(e) The Local Government Commission may submit an application on behalf of a distressed unit for an emergency grant from the Viable Utility Reserve to cover operating deficits of that local government unit's public water system or wastewater system, and any such application shall be deemed approved by the Local Government Commission upon submission. (2005-454, s. 3; 2011-145, s. 13.11A(b); 2015-241, s. 14.13(c2); 2019-241, s. 11(h); 2020-79, ss. 1(d), 6(a).)

#### **§ 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.

(d) Viable Utility Reserve. – The Department is authorized to make grants from the Viable Utility Reserve to do any of the following:

- (1) Provide physical interconnection and extension of public water or wastewater infrastructure to provide regional service.

- (2) Rehabilitate existing public water or wastewater infrastructure.
- (3) Decentralize an existing public water system or wastewater system into smaller viable parts.
- (4) Fund a study of any one or more of the following:
  - a. Rates.
  - b. Asset inventory and assessment.
  - c. Merger and regionalization options.
- (5) Fund other options deemed feasible which result in local government units 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.
- (6) Provide emergency grants for operating deficits in accordance with G.S. 159G-34.5(a)(4). (2005-454, s. 3; 2013-360, s. 14.21(h); 2019-241, s. 11(e); 2020-79, ss. 1(e), 6(a).)

**§ 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) Loan. – A loan is available for a project authorized in G.S. 159G-32(b).
- (2) Project grant. – A project grant is available for a portion of the construction costs of a wastewater collection system project, a wastewater treatment works project, or a stormwater quality project as authorized in G.S. 159G-32(b).
- (3) Merger/regionalization feasibility grant. – A merger/regionalization feasibility grant is available to determine the feasibility of consolidating the management of multiple utilities into a single utility operation or to provide regional treatment and the best way of carrying out the consolidation or regionalization. The Department shall not make a loan or grant under this subdivision for a merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.
- (3a) Asset inventory and assessment grant. – An asset inventory and assessment grant is available to inventory the existing water and/or sewer system and document the condition of the inventoried infrastructure.
- (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.
- (5) Repealed by Session Laws 2019-241, s. 11(a), effective November 6, 2019.

(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; 2015-241, s. 14.13(d), (e); 2019-226, s. 2; 2019-241, s. 11(a).)

**§ 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) Loan. – A loan is available for a project for a public water system.
- (2) Project grant. – A project grant is available for a portion of the construction costs of a public water system project as defined in G.S. 159G-32(c).
- (3) Merger/regionalization feasibility grant. – A merger/regionalization grant is available to determine the feasibility of consolidating the management of multiple utilities into a single utility operation or to provide regional water supply and the best way of carrying out the consolidation or regionalization. The Department shall not make a loan or grant under this subdivision for a merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.
- (3a) Asset inventory and assessment grant. – An asset inventory and assessment grant is available to inventory the existing water and/or sewer system and document the condition of the inventoried infrastructure.
- (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.
- (5) Repealed by Session Laws 2019-241, s. 11(a), effective November 6, 2019.

(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; 2015-241, s. 14.13(f), (g); 2019-226, s. 3; 2019-241, s. 11(a).)

**§ 159G-34.1: Reserved for future codification purposes.**

**§ 159G-34.2: Reserved for future codification purposes.**

**§ 159G-34.3: Reserved for future codification purposes.**

**§ 159G-34.4: Reserved for future codification purposes.**

**§ 159G-34.5. Grant types available from Viable Utility Reserve.**

(a) The Department is authorized to make the following types of grants from the Viable Utility Reserve:

- (1) Asset assessment and rate study grant. – An asset inventory and assessment grant is available to inventory the existing public water or wastewater system, or both, document the condition of the inventoried infrastructure, and conduct a rate study to determine a rate structure sufficient to prevent the local government unit from becoming a distressed unit.
- (2) Merger/regionalization feasibility grant. – A merger/regionalization grant is available to determine the feasibility of consolidating the management of multiple water or wastewater systems into a single operation or to provide regional treatment or water supply and the best way of carrying out the consolidation or regionalization. The Department shall not make a grant under this subdivision for a merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.

- (3) Project grant. – A project grant is available for a portion of the costs of a public water system or wastewater project as defined in G.S. 159G-32(d).
- (4) Emergency grant for operating deficit. – An emergency grant for operating deficits is available for distressed units if the Local Government Commission has exercised its powers under G.S. 159-181 to assume full or partial control over the affairs of the public water or wastewater system or of the local government unit or public authority that owns or operates the public water or wastewater system.

(b) A grant awarded from the Viable Utility Reserve may be awarded to a regional council of government created under Part 2 of Article 20 of Chapter 160A of the General Statutes or to a regional planning commission created under Article 19 of Chapter 153A of the General Statutes, if the Department and the Local Government Commission determine it is in the best interest of the local government unit.

(c) Each type of grant must be administered through a separate account within the Viable Utility Reserve. (2019-241, s. 11(f); 2020-79, ss. 1(f), 6(a).)

#### **§ 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 priority considerations in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Certain Reserves. – The priority considerations 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.

(c) Viable Utility Reserve. – The Local Government Commission and the Authority shall jointly develop evaluation criteria for grants from the Viable Utility Reserve. Criteria shall also be developed concerning distressed units for which the Local Government Commission has exercised its authority under Article 11 of Chapter 159 of the General Statutes to assume control, in whole or in part, of the financial affairs of an applicant. These evaluation criteria shall be used to review applications and award grants as provided in G.S. 159G-39. (2005-454, s. 3; 2015-241, s. 14.13(h); 2020-79, s. 1(g); 2023-134, s. 12.3(a).)

#### **§ 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) Certain 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.

(b1) Viable Utility Reserve Cost Limit. – The amount of a grant from the Viable Utility Reserve shall not exceed the construction costs of a project. A grant from this Reserve is available only to the extent that other funding sources are not reasonably available to the applicant.

(c) Certain Reserve Recipient Limit. – The following limits apply to the loan or grant types 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 project grants awarded for three consecutive fiscal years may not exceed three million dollars (\$3,000,000).
- (4) The amount of merger/regionalization feasibility grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars (\$50,000).
- (5) The amount of asset inventory and assessment grants awarded for three consecutive fiscal years may not exceed one hundred fifty thousand dollars (\$150,000).

(d) Viable Utility Reserve Recipient Limit. – Grants under the Viable Utility Reserve are limited as follows:

- (1) Grants for the purposes set forth in subdivisions (1) through (5) of G.S. 159-32(d) shall not exceed fifteen million dollars (\$15,000,000) to any single local government unit. Where two or more local government units are merging into a single utility, the total grant awarded shall not exceed thirty million dollars (\$30,000,000).
- (2) Grants for the purpose set forth in G.S. 159G-32(d)(6) to any single local government unit shall not exceed seven hundred fifty thousand dollars (\$750,000) in any fiscal year. (2005-454, s. 3; 2015-241, s. 14.13(i); 2019-241, s. 11(g); 2020-79, ss. 1(h), 6(a); 2023-134, s. 12.3(b); 2024-45, s. 14.)

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

(a) Application. – An application for a loan or grant from the CWSRF, the Wastewater Reserve, the DWSRF, or the Drinking Water Reserve, or a grant from the Viable Utility Reserve, must be filed with the Division. 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.

(b) Certification. – The Division shall require all local governments applying for loans or grants for water or wastewater purposes to certify that no funds received from water or wastewater utility operations have been transferred to the local government's general fund for the purpose of supplementing the resources of the general fund. The prohibition in this section shall not be

interpreted to include payments made to the local government to reimburse the general fund for expenses paid from that fund that are reasonably allocable to the regular and ongoing operations of the utility, including, but not limited to, rent and shared facility costs, engineering and design work, plan review, and shared personnel costs. (2005-454, s. 3; 2011-145, s. 13.3(kkk); 2013-360, s. 14.21(i); 2013-413, s. 57(u); 2014-100, s. 14.17; 2014-115, s. 17; 2020-79, s. 1(i).)

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

(a) Establish Environmental Assessment Process; Required Information. – The Division shall establish an environmental assessment process for projects funded from the CWSRF and DWSRF programs that is sufficient to meet federal environmental assessment requirements for such projects. Projects funded by the CWSRF or DWSRF shall meet the requirements of the environmental assessment process established pursuant to this subsection.

(b) Repealed by Session Laws 2015-90, s. 6, effective June 19, 2015.

(c) Hearing. – The Division 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); 2014-115, s. 17; 2015-90, s. 6.)

**§ 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.

(e) **Viable Utility Reserve Approval.** - The Department shall not award a grant from the Viable Utility Reserve Fund unless the Local Government Commission approves the award of the grant and the terms of the grant. Any emergency grant application submitted under G.S. 159G-31(e) shall be deemed approved by the Local Government Commission upon submission.

(f) **Grant Terms.** -

(1) **Viable Utility Reserve.** - The Department and the Local Government Commission may, in their discretion, impose specific performance measures or conditions on any grant awarded from the Viable Utility Reserve, including any grant submitted under G.S. 159G-31(e).

(2) **Drinking Water Reserve or Wastewater Reserve.** - The Department may impose specific performance measures or conditions on any grant awarded from the Drinking Water Reserve or Wastewater Reserve to ensure an adequately funded program for the repair, maintenance, and management of the water or wastewater infrastructure. (2005-454, s. 3; 2011-145, s. 13.3(nnn); 2013-360, s. 14.21(k); 2013-413, s. 57(w); 2014-115, s. 17; 2020-79, s. 1(j); 2021-180, s. 12.12(b).)

#### **§ 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 targeted interest rate project is 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a targeted interest rate 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); 2015-207, s. 4(a); 2016-94, ss. 14.23(a), (b).)

#### **§ 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. Assessment of local government units; assistance.**

(a) The Authority and the Local Government Commission shall develop criteria to determine how local government units should be assessed and reviewed in accordance with this section, and these criteria shall address at least all of the following:

- (1) Whether the public water or wastewater system serves less than 10,000 customers.
- (2) Whether the public water or wastewater system has an established, operational, and adequately funded program for its repair, maintenance, and management.
- (3) Whether the annual debt service is disproportionate to the public water or wastewater system's annual revenue.
- (4) Whether the local government unit has appropriated funds from its utility or public service enterprise fund in accordance with G.S. 159-13(b)(14) in two or more of the preceding five fiscal years without maintaining a reserve fund sufficient to provide for operating expenses, capital outlay, and debt service.
- (5) Whether the local government unit has appropriated funds to supplement the operating expenses, capital outlay, or debt service on outstanding utility or enterprise bonds or notes in excess of the user fees collected in two or more of the preceding five fiscal years.

(b) Utilizing the assessment and review process, the Authority and Local Government Commission shall identify distressed units. Each distressed unit identified under this subsection shall do all of the following:

- (1) Conduct an asset assessment and rate study, as directed and approved by the Authority and the Local Government Commission.
- (2) Participate in a training and educational program approved by the Authority and the Local Government Commission for that distressed unit. Attendance shall be mandatory for any governing board members and staff whose participation is required by the Authority and Local Government Commission. The scope of training and education, and its method of delivery, shall be at the discretion of the Authority and Local Government Commission.
- (3) Develop an action plan, taking into consideration all of the following:
  - a. A short-term and a long-term plan for infrastructure repair, maintenance, and management.

- b. Continuing education of the governing board and system operating staff.
- c. Long-term financial management to ensure the public water system or wastewater system will generate sufficient revenue to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
- d. Any other matters identified by the Authority or the Local Government Commission.

(c) Once an identified distressed unit has completed all of the requirements of subsection (b) of this section, that unit shall no longer be identified as a distressed unit for the remainder of that assessment and review cycle.

(d) The Authority and the Local Government Commission shall establish the frequency of the cycle for assessment and review of local government units under this section. The frequency of the cycle shall be not less than once every two years. (2020-79, s. 1(k); 2021-180, s. 12.12(c).)

**§ 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.**