

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 319*

Short Title: Water and Sewer Infrastructure/Funds. (Public)

Sponsors: Representatives Owens, Crawford, E. Warren, Brubaker (Primary Sponsors); K. Alexander, Bryant, Faison, Frye, Gillespie, Glazier, Hurley, Lucas, McLawhorn, Pierce, Ross, Spear, Tarleton, Tolson, Tucker, Wainwright, and R. Warren.

Referred to: Appropriations.

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE RURAL ECONOMIC DEVELOPMENT
CENTER FOR LOCAL GOVERNMENT WATER AND SEWER GRANTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Appropriation. – There is appropriated from the General Fund to the Rural Economic Development Center, Inc., (Rural Center) the sum of fifty million dollars (\$50,000,000) for the 2009-2010 fiscal year to be used to provide grants to local government units for wastewater-related projects and for public water system-related projects as provided by this section. The Board of Directors of the Rural Center may determine whether specific water or wastewater needs exist that merit special consideration and may establish one or more subcategories of the program to address the identified needs.

SECTION 1.(b) Definitions. – The definitions in G.S. 159G-20 apply in this section, except that all census calculations are based on the most recent federal decennial census. In addition, the following definitions shall apply in this section unless otherwise provided:

- (1) Ability to pay. – An assessment of the ability of a local government unit to pay for a water infrastructure project as calculated annually by the Division of Community Assistance in the Department of Commerce.
- (2) Economically distressed area. – Any of the following:
 - a. An economically distressed county as defined in G.S. 143B-437.01.
 - b. That part of a county in which the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. The poverty rate is the percentage of the population whose income is below the most recent federal poverty level set by the U.S. Bureau of the Census.
 - c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.
- (3) Rural county. – A county with a population density of fewer than 250 people per square mile based on the most recent federal decennial census.

SECTION 1.(c) Eligible Applicants; Eligible Projects. – A local government unit is eligible for a grant under this section if it meets the eligibility requirements under subsection (d) or subsection (e) of this section for the specific type of grant. The funds appropriated under this section may be used to provide either a planning grant that meets the requirements under subsection (d) of this section or a supplemental grant that meets the requirements of subsection (e) of this section. The following projects are eligible for receiving a grant under this section:



- 1 (1) Wastewater collection system.
- 2 (2) Wastewater treatment works.
- 3 (3) Public water system.
- 4 (4) Wastewater and drinking water infrastructure planning.
- 5 (5) Multijurisdictional wastewater, drinking water, water quality, and
- 6 stormwater planning.

7 **SECTION 1.(d)** Planning Grants. – A planning grant under this section is available
8 for the costs associated with preliminary planning for wastewater collection system projects,
9 wastewater treatment works projects, and public water system projects. Preliminary planning
10 includes developing a capital improvement plan, developing a comprehensive land-use plan
11 that provides for water quality protection, conducting a feasibility study, developing a regional
12 or multijurisdictional infrastructure or water quality improvement plan, assembling a financing
13 plan to carry out a project, completing a grant application, and preparing a preliminary
14 engineering report for a proposed project. A planning grant is subject to the following
15 restrictions:

- 16 (1) Eligibility. – A local government unit is eligible for a planning grant if it
17 meets the following criteria:
 - 18 a. It is a rural county or is located in one of these counties.
 - 19 b. It is an economically distressed county or is located in an
20 economically distressed county or an economically distressed area.
 - 21 c. For purposes of this subsection, a regional council of governments
22 organized under G.S. 160A-460 or a regional planning and
23 development commission organized under G.S. 153A-391 is
24 considered a local government unit. A regional council of
25 governments or regional planning and development commission is
26 eligible for a grant if it serves a rural county and is applying for a
27 regional or multijurisdictional planning project involving two or
28 more units of local government.
- 29 (2) Maximum. – A planning grant shall not exceed forty thousand dollars
30 (\$40,000) for each unit of local government.
- 31 (3) Matching funds. – A local government unit shall match a planning grant on a
32 dollar-for-dollar basis unless the unit meets one or more of the following
33 descriptions, in which instance the Rural Center may require a match of
34 fifty percent (50%) or less:
 - 35 a. It is an economically distressed county or located in an economically
36 distressed county.
 - 37 b. Its poverty rate is at least one hundred fifty percent (150%) of the
38 State poverty rate.
 - 39 c. If it is not a county, its ability to pay is less than fifty percent (50%)
40 of the ability to pay of the county in which it is located.

41 **SECTION 1.(e)** Supplemental Grants. – A supplemental grant is available to match
42 other funds to be applied to the construction costs of an eligible project. Other funds include
43 federal funds, State funds, and local funds. A supplemental grant is subject to the following
44 restrictions:

- 45 (1) Eligibility. – A local government unit is eligible for a supplemental grant if it
46 meets the following criteria:
 - 47 a. It is a rural county or is located in one of these counties.
 - 48 b. It adopts a resolution to set the household user fee for water and
49 sewer service in the area served by the project at an amount that
50 equals or exceeds the high-unit-cost threshold.

- 1 (2) Maximum. – A supplemental grant shall not exceed five hundred thousand
2 dollars (\$500,000) unless the applicant meets one or more of these
3 descriptions:
4 a. It is an economically distressed county or is located in an
5 economically distressed county.
6 b. Its poverty rate is at least one hundred fifty percent (150%) of the
7 State poverty rate.
8 c. If it is not a county, its ability to pay is less than fifty percent (50%)
9 of the ability to pay of the county in which it is located.

10 The maximum supplemental grant for an applicant meeting at least one of
11 these descriptions is the lesser of one million dollars (\$1,000,000) or
12 twenty-five percent (25%) of the total project cost.

- 13 (3) Matching funds. – A local government unit shall match a supplemental grant
14 on a dollar-for-dollar basis unless the unit meets one or more of the
15 following descriptions, in which instance the Rural Center may require a
16 match of fifty percent (50%) or less:
17 a. It is an economically distressed county or is located in an
18 economically distressed county.
19 b. Its poverty rate is at least one hundred fifty percent (150%) of the
20 State poverty rate.
21 c. If it is not a county, its ability to pay is less than fifty percent (50%)
22 of the ability to pay of the county in which it is located.

23 A local government unit that meets one or more of these descriptions may
24 not provide less than a dollar-for-dollar match if the supplemental grant
25 amount requested exceeds five hundred thousand dollars (\$500,000).

26 **SECTION 1.(f)** Criteria for Grants. – All projects must document a current critical
27 water or wastewater need affecting human health or the environment. The criteria in
28 G.S. 159G-23, the criteria set out in this section, and any other criteria established by the Board
29 of Directors of the Rural Center shall apply to a grant provided under this section. An
30 application for a project that serves an economically distressed area shall have priority over a
31 project that does not. The Board of Directors of the Rural Center may determine that a crisis
32 need exists that merits special consideration and may establish a subcategory of this program to
33 address one or more crisis applications. No provision in this section is intended to prohibit the
34 Board of Directors of the Rural Center from working with the members of the General
35 Assembly and the Governor to deploy resources to stimulate economic recovery to rural
36 communities in the State. To that end, the Board of Directors of the Rural Center may
37 determine that an economic crisis situation exists and grant a waiver of the requirement under
38 subsection 1(d)(1)a. or 1(e)(1)a. to assist communities that otherwise would qualify for
39 assistance under this program. Furthermore, under this program, the Rural Center may contract
40 with other agencies to explore and test new and alternative water and wastewater technologies
41 that may benefit small and rural communities.

42 **SECTION 1.(g)** Grant Applications. – Any application for a grant under this
43 section shall be submitted by the local government unit to the Rural Center. An application
44 shall be submitted on a form prescribed by the Rural Center and shall contain the information
45 required by the Rural Center. An applicant shall submit to the Rural Center any additional
46 information requested by the Rural Center to enable the Rural Center to make a determination
47 on the application. An application that does not contain information required on the application
48 or requested by the Rural Center is incomplete and is not eligible for consideration. An
49 applicant may submit an application in as many categories as it is eligible for consideration
50 under this section.

1 **SECTION 1.(h)** Environmental Assessment. – An application submitted under this
2 section for a supplemental grant shall state whether the project to be funded by the grant
3 requires an environmental assessment. If the application indicates that an environmental
4 assessment is not required, it must identify the exclusion in the North Carolina Environmental
5 Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. The
6 Rural Center shall give the Department of Environment and Natural Resources a copy of an
7 application that indicates an environmental assessment is not required. If the Department of
8 Environment and Natural Resources determines that the project requires an environmental
9 assessment, the Department shall notify the Rural Center and the applicant, and the applicant
10 shall submit the assessment to the Department before the Rural Center continues its review of
11 the application. An application that does not identify an exclusion in the North Carolina
12 Environmental Policy Act shall include the environmental assessment of the project's probable
13 impacts on the environment that was submitted to the Department of Environment and Natural
14 Resources. If the Department notifies the Rural Center that an environmental impact statement
15 is required, the Rural Center shall not award the applicant a grant until a final environmental
16 impact statement has been completed and approved as provided in the Environmental Policy
17 Act.

18 **SECTION 1.(i)** Review of Applications and Award of Grant. – The Rural Center
19 shall review grant applications and award grants as provided by this subsection:

- 20 (1) Point assignment. – The Rural Center shall review all grant applications
21 submitted under this section for an application period, to be determined by
22 the Rural Center, and shall rank each application in accordance with the
23 points assigned to the evaluation criteria. Applications addressing a crisis
24 need may be ranked according to a special set of criteria or be reviewed for a
25 specifically determined application period. The Rural Center shall make a
26 written determination of an application's rank and attach the determination to
27 the application. The Rural Center's determination of rank is conclusive.
- 28 (2) Reconsideration. – When an application's rank is too low to receive an award
29 of a grant for the application period, the Rural Center may reconsider an
30 amended application, provided the application addresses questions from the
31 previous grant round. The Rural Center may reject any amended application
32 that does not adequately address questions from the previous grant round.
33 The Rural Center's determination of adequacy is conclusive.
- 34 (3) Notification of decision. – When the Rural Center determines that an
35 application's rank makes it eligible for an award of a grant, the Rural Center
36 shall send the applicant a letter of intent to award the grant. The notice shall
37 set out any conditions the applicant must meet to receive an award of a
38 grant. When the applicant satisfies the conditions set out in the letter of
39 intent, the Rural Center shall send the applicant an offer to award a grant.
40 The applicant shall give the Rural Center written notice of whether it accepts
41 or rejects the offer. A grant is considered awarded the date the offer to award
42 the grant is sent by the Rural Center.

43 **SECTION 1.(j)** Disbursement of Grant. – A planning grant awarded under this
44 section shall be disbursed in not more than two payments. Other grants awarded under this
45 section shall be disbursed in two or more payments based on the progress of the project for
46 which the grant was awarded. To obtain a payment, a grant recipient shall submit a request for
47 payment to the Rural Center and shall document the expenditures for which the payment is
48 requested. The Rural Center shall review the payment request for compliance with all grant
49 conditions.

50 **SECTION 1.(k)** Withdrawal of Grant. – An award for a supplemental grant for a
51 project is withdrawn if the applicant fails to enter into a construction contract for the project

1 within one year after the date of the award for supplemental grants under subsection (e) of this
2 section unless the Board of Directors of the Rural Center finds that the applicant has good
3 cause for the failure. If the Rural Center finds good cause for an applicant's failure, the Rural
4 Center shall set a date by which the applicant must take action or forfeit the grant. Planning
5 grants may be withdrawn if there is insufficient progress in meeting the scope of work within
6 one year of the award date.

7 **SECTION 1.(l)** Inspection of Project. – The Rural Center may inspect a project as
8 provided by this subsection:

- 9 (1) Authority. – The Rural Center may inspect a project for which it awards a
10 grant under this section to determine the progress made on the project and
11 whether the construction of the project is consistent with the project
12 described in the grant application. The inspection may be performed by
13 personnel of the Rural Center or by a professional engineer licensed under
14 Chapter 89C of the General Statutes.
- 15 (2) Disqualification. – An individual may not perform an inspection of a project
16 under this section if the individual meets any of the following criteria:
- 17 a. Is an officer or employee of the local government unit that received
18 the grant award for the project.
- 19 b. Is an owner, officer, employee, or agent of a contractor or
20 subcontractor engaged in the construction of the project for which the
21 grant was made.

22 **SECTION 1.(m)** Administration Costs. – The Rural Center may use a portion of
23 the funds appropriated under this section for administration, not to exceed two percent (2%),
24 for the life of the grant program created by this section.

25 **SECTION 1.(n)** Reporting Requirement. – The Rural Center shall report to the
26 Joint Legislative Commission on Governmental Operations on a semiannual basis concerning
27 the progress of the grant program created under this section. The first report is due no later than
28 January 15, 2010.

29 **SECTION 1.(o)** Separate Accounts. – Each grant that is provided under this
30 section shall be administered through a separate account.

31 **SECTION 1.(p)** Loans Prohibited. – The Rural Center shall not use the funds
32 appropriated under this section to make loans.

33 **SECTION 2.** This act becomes effective July 1, 2009.